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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
BEFORE THE HONORABLE JOHN E. MUNTER, JUDGE
DEPARTMENT NO. 505

LESLIE J. WHITELEY AND)
LEONARD WHITELEY,)
PLAINTIFFS,)
VS.) NO. 303184
RAYBESTOS-MANHATTAN, INC., ET)
AL.,)
DEFENDANTS.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
MONDAY, FEBRUARY 28, 2000
(VOLUME 32, PAGES 4494-4630)

REPORTED BY: JUDITH ANN OSSA, CSR 2310
OFFICIAL REPORTER

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APPEARANCES:

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MONDAY, FEBRUARY 28, 2000 9:50 A.M.

(THE FOLLOWING PROCEEDINGS WERE HELD IN THE COURTROOM, IN THE PRESENCE OF THE JURY)

THE COURT: GOOD MORNING, JURORS. I APOLOGIZE FOR THE DELAY. I WAS DOING SOME WORK WITH THE LAWYERS. OKAY.

MS. CHABER.

MS. CHABER: YES, YOUR HONOR. BEFORE WE GET STARTED WITH DR. MARTIN, I WOULD ASK THE COURT TO READ A STATEMENT TO THE JURY REGARDING THE PLAINTIFF.

THE COURT: OKAY. IS THERE ANY OBJECTION TO MY DOING THAT AT THIS TIME, TO READ THAT STATEMENT AT THIS TIME?

MR. FURR: NO, YOUR HONOR.

MR. HARDY: NO, YOUR HONOR.

MR. ESCHER: NO, YOUR HONOR.

THE COURT: JURORS, HERE IS THE BRIEF STATEMENT:

"PLAINTIFF LESLIE WHITELEY WILL BE UNABLE TO RETURN TO THE COURTROOM DUE TO HER HEALTH CONDITION. YOU MUST NOT HOLD THAT FACT AGAINST ANY PARTY IN DECIDING THIS CASE."

THAT'S THE BRIEF STATEMENT.

OKAY. MS. CHABER, YOU MAY PROCEED. DR. MARTIN IS BACK ON THE WITNESS STAND.

FURTHER TESTIMONY OF

CLAUDE MARTIN, PH.D.,

A WITNESS CALLED ON BEHALF OF THE DEFENSE, HAVING BEEN

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PREVIOUSLY DULY SWORN, TESTIFIED FURTHER AS FOLLOWS:

CROSS-EXAMINATION (RESUMED)

BY MS. CHABER: Q. GOOD MORNING, DR. MARTIN.

A. GOOD MORNING.

Q. IF YOU CAN'T HEAR ME, PLEASE LET ME KNOW. I'M IN THE PROCESS OF BEING ABOUT TO LOSE MY VOICE.

A. SORRY.

Q. MAYBE NOT.

DR. MARTIN, WOULD YOU AGREE THAT IT IS POSSIBLE THAT ADVERTISING COULD INFLUENCE BRAND CHOICE AMONG TEENAGE

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SMOKERS?
A. YES, I THINK THAT'S POSSIBLE.
Q. AND WOULD YOU AGREE THAT A BRAND COULD FULFILL A NEED THAT A TEENAGER MIGHT HAVE WITH RESPECT TO THEIR IMAGE?
A. I HAVE SOME DOUBTS A LITTLE BIT ABOUT THAT, BECAUSE OF THE INFORMATION AND DATA THAT I HAVE SEEN FROM THE UNIVERSITY OF MICHIGAN STUDY ON THAT SUBJECT.
Q. DO YOU RECALL BEING DEPOSED IN MISSISSIPPI?
A. I RECALL BEING DEPOSED IN THE CASE OF THE ATTORNEY GENERAL OF MISSISSIPPI, YES.
Q. YOU MIGHT HAVE BEEN BACK IN MICHIGAN, BUT IT WAS FOR A CASE THAT WAS PENDING BY THE ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI; CORRECT?
A. YES, THAT'S CORRECT.
Q. AND DO YOU RECALL MAKING THE FOLLOWING STATEMENT --
MR. ESCHER: EXCUSE ME, YOUR HONOR. COULD WE

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GET A COPY OF THAT?
THE COURT: IF THERE IS AN OBJECTION TO THE FORM, I WOULD SUSTAIN.
MS. CHABER: I THINK I'M SHORT ONE, YOUR HONOR.
THE COURT: IF YOU WANT TO READ SOMETHING, WHY DON'T YOU TELL US THE LINES AND THE PAGES. IF THERE'S NO OBJECTION, I DON'T NEED A COPY.
MS. CHABER: OKAY. PAGE 127, LINES 13 TO 18.
MR. ESCHER: I DON'T HAVE ANY OBJECTION, YOUR HONOR.
THE COURT: YOU MAY READ.
MS. CHABER: "QUESTION: WOULD THE BRAND OF A CIGARETTE THEY CHOOSE FULFILL SOME NEED THAT THEY HAVE?
"ANSWER: YES. IT'S QUITE POSSIBLE THAT A BRAND OF A CIGARETTE COULD FULFILL A NEED THAT SOMEBODY HAD, YES."
Q. IS THAT YOUR ANSWER TO THE QUESTION ASKED OF YOU IN MISSISSIPPI?
A. YES, IT IS.
Q. ARE YOU AWARE, SIR, THAT MARLBORO, CAMEL AND NEWPORT ARE THE MOST HEAVILY ADVERTISED BRANDS OF CIGARETTES?
A. I BELIEVE THEY ARE.
Q. AND ARE YOU AWARE, SIR, THAT THOSE ARE THE MOST FREQUENTLY USED CIGARETTES BY TEENAGERS?
MR. ESCHER: OBJECTION, YOUR HONOR. VAGUE AS TO TIME.

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THE COURT: YES. AT WHAT POINT?
MS. CHABER: FROM THE 1970S TO THE PRESENT.
THE WITNESS: I BELIEVE THAT THERE IS DATA THAT I HAVE SEEN THAT WOULD INDICATE THAT, YES.
MS. CHABER: Q. WOULD YOU AGREE, SIR, THAT ADOLESCENCE IS A TIME OF IDENTITY FORMATION?

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A. I'M NOT AN EXPERT IN IDENTITY FORMATION BY ADOLESCENTS. I'M SORRY. I THINK THAT'S MORE OF A CHILD PSYCHOLOGY DISCIPLINE.

Q. WELL, SIR, IN ORDER TO DETERMINE WHETHER OR NOT ADVERTISING AND PROMOTIONAL THINGS APPEAL TO CHILDREN, WOULDN'T YOU NEED TO KNOW WHAT IDENTITY ISSUES CHILDREN WOULD HAVE IN ADOLESCENCE?

MR. ESCHER: OBJECTION, YOUR HONOR. VAGUE. ALSO, BEYOND THE SCOPE OF THE DIRECT EXAMINATION.

THE COURT: OVERRULED.

THE WITNESS: I THINK I BETTER HAVE IT READ BACK BECAUSE OF --

THE COURT: THAT'S FINE.

THE WITNESS: -- WHAT'S GONE ON.

THE COURT: IF YOU NEED TO HAVE IT READ BACK, DON'T HESITATE. WE'D RATHER HAVE THE QUESTION READ BACK RATHER THAN HAVE YOU HAVE QUESTIONS ABOUT IT. THERE IS NOTHING WRONG WITH YOU HAVING IT READ BACK.

THE WITNESS: THANK YOU, YOUR HONOR.

(RECORD READ)

THE WITNESS: I SUPPOSE, IF YOU WERE GOING TO FRAME AN ADVERTISING CAMPAIGN THAT WAS DIRECTED AT CHILDREN,

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YOU MIGHT WANT TO KNOW SOMETHING ABOUT CHILDREN AND WHAT WOULD APPEAL TO THEM.

MS. CHABER: Q. AND I SUPPOSE, IF YOU WERE GOING TO DIRECT AN ADVERTISING CAMPAIGN TO CHILDREN, YOU WOULD LOOK AT THE KINDS OF THEMES THAT APPEAL TO CHILDREN, WOULD YOU NOT?

A. I SUPPOSE IF YOU WERE GOING TO WRITE ADVERTISING FOR CHILDREN, YES, I GUESS YOU WOULD LOOK AT THE THEMES THAT MIGHT APPEAL TO THEM.

Q. AND ONE OF THE THEMES THAT MIGHT APPEAL TO CHILDREN IS A THEME OF INDEPENDENCE?

MR. ESCHER: OBJECTION. LACK OF FOUNDATION. VAGUE, YOUR HONOR.

THE COURT: WELL, WHEN YOU SAY "LACK OF FOUNDATION," IF HE DOESN'T KNOW, HE CAN TELL US. AND IF HE DOES, HE WILL TELL US.

I WILL OVERRULE.

THE WITNESS: THAT'S WHY I HAD MY RESPONSE EARLIER ABOUT THE UNIVERSITY OF MICHIGAN STUDY, BECAUSE THEY SPECIFICALLY LOOKED AT INDEPENDENCE AND WHETHER OR NOT INDEPENDENCE HAD A RELATIONSHIP TO IDENTIFICATION OF CIGARETTE SMOKERS.

AND AS IT TURNS OUT, INDEPENDENCE IS NOT A MAJOR IMAGE THAT IS ASSOCIATED BY HIGH SCHOOL SENIORS WITH CIGARETTE SMOKING OR SMOKERS.

MS. CHABER: Q. I DON'T THINK YOU QUITE ANSWERED MY QUESTION, SIR.

A. I APOLOGIZE.

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Q. ARE THERE CERTAIN THEMES THAT APPEAL TO CHILDREN, SUCH AS THE THEME OF INDEPENDENCE?

A. IF YOU SAY SO.

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BUT MY PROBLEM WITH THAT IS THAT THERE IS SOME INDICATION FROM THE DATA FROM THE UNIVERSITY OF MICHIGAN WHICH WOULD INDICATE THAT THAT IS NOT A MAJOR FACTOR FOR CHILDREN, AT LEAST AS IT RELATES TO CIGARETTE SMOKING.

Q. SIR, WOULD YOU AGREE THAT ADVENTURE-SEEKING IS A THEME THAT APPEALS TO CHILDREN?

A. AGAIN, THE SAME PROBLEM I HAVE IS, BECAUSE OF THE UNIVERSITY OF MICHIGAN STUDY, AGAIN -- I MEAN, I'M TRYING TO BE RESPONSIVE TO YOU, BUT MY DIFFICULTY WITH IT IS THAT WHEN YOU SAY "ADVENTURE-SEEKING APPEALS TO CHILDREN," YOU REALLY ARE GETTING INTO THE CHILD PSYCHOLOGY AREA, AND THAT'S NOT MY EXPERTISE.

Q. WELL, SIR, WOULD YOU BE INTERESTED TO HAVE KNOWN WHETHER OR NOT R.J. REYNOLDS OR PHILIP MORRIS LOOKED AT WHAT THEMES APPEALED TO CHILDREN IN DEVELOPING THEIR MARKETING?

A. I'D LOOK AT IT -- I MEAN, WOULD IT BE OF INTEREST TO ME? IT WOULD NOT BE. IT IS NOT WHAT I WAS STUDYING IN PREPARATION FOR THIS CASE.

Q. SIR, I TAKE IT THEN THAT IF THERE WERE MEMORANDA AND OTHER DOCUMENTS WITHIN R.J. REYNOLDS AND PHILIP MORRIS THAT ANALYZED WHAT THEMES APPEALED TO CHILDREN, YOU WOULD NOT CONSIDER THAT IN FORMING YOUR OPINION IN THIS CASE; CORRECT?

A. I WOULD NOT CONSIDER IT IN FORMING MY OPINION IN THIS CASE FOR A NUMBER OF DIFFERENT REASONS, YES.

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Q. AND, SIR, YOU'D AGREE, WOULD YOU NOT, THAT TO SOME EXTENT, YOUNG SMOKERS WEAR THEIR CIGARETTES; IN OTHER WORDS, WEAR THE IDENTITY OF THE CIGARETTE?

A. I'VE NEVER SEEN ANY RESEARCH ON THAT.

Q. YOU KNOW -- OKAY. YOU HAVEN'T SEEN RESEARCH ON THAT.

YOU DO KNOW THAT CHILDREN, TEENAGERS IN PARTICULAR, WEAR CERTAIN CLOTHING FOR THEIR IDENTITY?

A. WELL, I KNOW -- I KNOW THAT CERTAIN TEENAGERS DO WEAR CLOTHING THAT MAY HAVE SOME MARK OR SOMETHING ON IT, BECAUSE I SEE IT ON NOW MY OWN CHILDREN AND GRANDCHILDREN. THEY KEEP GIVING ME THINGS, IN FACT, THAT HAVE IT AT ON THEM TOO.

Q. SIR, YOU UNDERSTAND THAT CERTAIN STYLES OF DRESS, ONE KID IMITATES ANOTHER KID IN STYLE OF DRESS?

MR. ESCHER: OBJECTION, YOUR HONOR. VAGUE AS TO THE TERM "KID."

IT'S VAGUE, YOUR HONOR. THAT'S MY OBJECTION.

THE COURT: TELL US IS WHAT YOU MEAN BY "KID."

MS. CHABER: SOMEONE UNDER THE AGE OF 18.

THE WITNESS: WEARS CLOTHING IN IMITATION OF ANOTHER PERSON WHO IS THE UNDER THE AGE OF 18?

MS. CHABER: Q. THAT'S CORRECT.

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A. FROM MY OWN OBSERVATION, I HAVEN'T REALLY STUDIED THAT.

BUT I MEAN, FROM MY OWN OBSERVATION, I SEE KIDS WHO ARE DRESSED SIMILARLY, SURE. AND I SEE MY KIDS -- WELL, MY KIDS ARE KIND OF OLD NOW, BUT AT LEAST I HAVE ONE

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GRANDCHILD WHO IS PROBABLY IN THAT CATEGORY YOU'RE THINKING OF. I SEE HIM WEARING CLOTHING THAT IS KIND OF IMITATIVE OF WHAT OTHER KIDS WEAR.

Q. AND STYLE OF HAIR; THAT'S IMITATIVE OF WHAT OTHER KIDS WEAR?

A. WELL, GEE, I'M NOT AN EXPERT ON HAIR STYLES OF KIDS, BUT I DON'T KNOW. FROM MY OWN EXPERIENCE, I HAVE A GRANDSON WHO'S GOT A BUZZ CUT. I'M NOT -- ONE OF THE OTHER KIDS SEEMS TO HAVE LONG HAIR.

I'M NOT SURE ABOUT THAT, I SUPPOSE.

Q. SIR, HAVE YOU EVER LOOKED AT -- STRIKE THAT.

WOULD YOU AGREE, SIR, THAT SMOKING A CIGARETTE FOR THE BEGINNER IS A SYMBOLIC ACT?

A. A SYMBOLIC ACT? I DON'T KNOW WHAT YOU MEAN BY "SYMBOLIC ACT." I'M SORRY.

Q. AN ACT THAT SAYS, "I'M NO LONGER MY MOTHER'S CHILD. I'M TOUGH, I'M AN ADVENTURER. I'M NOT A SQUARE."

A. THE DATA I'VE SEEN DOESN'T USE THOSE WORDS, THAT TERMINOLOGY THAT YOU'VE JUST USED.

BUT THE DATA THAT I HAVE SEEN INDICATES THAT THE TERMINOLOGY IS REBELLIOUSNESS THAT IS ASSOCIATED WITH THE CIGARETTE SMOKING INITIATION.

Q. AND, SIR, HAVE YOU EVER LOOKED AT PHILIP MORRIS DOCUMENTS TO SEE WHETHER OR NOT THEY USED THAT TERMINOLOGY IN DETERMINING WHY ONE SMOKES CIGARETTES?

A. NO, I HAVEN'T LOOKED AT ANY DOCUMENTS FROM PHILIP MORRIS.

Q. YOU WERE NEVER SHOWN A 1969 MEMORANDUM ENTITLED

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"WHY ONE SMOKES" THAT USES THAT LANGUAGE, THAT SMOKING IS A SYMBOLIC ACT?

A. THIS IS A PHILIP MORRIS DOCUMENT?

Q. YES.

A. NO.

Q. WELL, SIR, HAVE YOU EVER LOOKED AT A 1975 MEMORANDUM OF R.J. REYNOLDS THAT LOOKS AT TEENAGERS AND WHAT APPEALS TO TEENAGERS?

A. NO, I HAVE NOT.

Q. SIR, YOU ARE AWARE, ARE YOU NOT, THAT -- I'M LOSING MY VOICE HERE -- THAT THERE ARE MARKETING MEMORANDA, INTERNAL MEMORANDA FROM THE TOBACCO COMPANIES THAT INVOLVE MARKETING TO CHILDREN? YOU ARE AWARE OF THAT; CORRECT?

MR. ESCHER: OBJECTION, YOUR HONOR. VAGUE AS TO THE TERM "MARKETING TO CHILDREN."

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THE COURT: SUSTAINED.
MS. CHABER: Q. SIR, YOU ARE AWARE OF MEMORANDA THAT ANALYZE THE NEEDS OF CHILDREN AND THE DIRECTION OF ADVERTISING TOWARDS THOSE NEEDS THAT ARE INTERNAL TO THE TOBACCO COMPANIES, ARE YOU NOT?
A. NO, MA'AM, I'M NOT AWARE OF MEMORANDA.
I AM AWARE, HAVING READ IN THE PRESS THAT THERE ARE -- IN ONE CASE, IT WAS THOUSANDS. AND IN ANOTHER CASE I READ -- I GUESS IT WAS IN CONJUNCTION WITH THE MINNESOTA ATTORNEY GENERAL CASE -- THAT THERE IS OVER A MILLION DOCUMENTS THAT HAVE COME FROM VARIOUS CIGARETTE COMPANIES THAT HAVE BECOME PUBLIC, SO TO SPEAK.
BUT THAT'S -- I'M NOT AWARE OF THE SPECIFIC
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MEMORANDA THAT YOU'RE TALKING ABOUT.
Q. SIR, IS IT FAIR TO SAY THAT YOU HAVE NOT LOOKED AT ONE SINGLE INTERNAL TOBACCO INDUSTRY DOCUMENT IN RELATION TO WHETHER OR NOT THEY ANALYZE CHILDREN AND THE NEEDS OF CHILDREN IN MARKETING THEIR PRODUCTS OTHER THAN WHAT MAY HAVE BEEN SHOWN TO YOU IN A COURTROOM BY AN ATTORNEY SUCH AS MYSELF?
A. IT IS CORRECT THAT I HAVE NOT SEEN ANY INTERNAL DOCUMENTS FROM THE CIGARETTE COMPANIES OTHER THAN DOCUMENTS THAT APPEARED -- EITHER WERE SHOWN TO ME IN A DEPOSITION OR COURTROOM OR WERE ATTACHED TO AN EXPERT'S REPORT.
Q. AND, SIR, IS IT FAIR TO SAY THAT YOU HAVE SPENT NO TIME LOOKING THROUGH THE INTERNAL FILES OF THE PEOPLE YOU ARE HERE TESTIFYING ON BEHALF OF TO SEE WHETHER OR NOT THEY HAVE DOCUMENTS THAT ADDRESS THE ISSUE OF YOUTH AND MARKETING TO YOUTH?
A. I DID NOT LOOK AT ANY INTERNAL COMPANY DOCUMENTS FOR THREE SIGNIFICANT REASONS.
Q. YOU HAVE NOT LOOKED AT ANY COMPANY DOCUMENTS, ALTHOUGH YOU HAVE BEEN TESTIFYING ON BEHALF OF CIGARETTE COMPANIES SINCE THE LATE 1980S; IS THAT CORRECT?
A. WELL, FIRST OF ALL, I'VE ONLY TESTIFIED A FEW TIMES. I'M NOT SURE THAT I TESTIFIED ON BEHALF OF THE CIGARETTE COMPANIES. THAT MAY BE LEGALLY CORRECT.
BUT I'VE BEEN RETAINED BY LAW FIRMS TO ADDRESS THE ISSUE OF SMOKING INITIATION AND SMOKING BEHAVIOR AND REPORT ON WHAT MY CONCLUSIONS ARE CONCERNING THOSE.
Q. AND IT'S FAIR TO SAY, SIR, THAT YOU HAVE NOT
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ANALYZED ANYTHING INSIDE PHILIP MORRIS OR R.J. REYNOLDS OR LORILLARD OR BROWN & WILLIAMSON OR ANY OTHER TOBACCO COMPANY'S FILES TO SEE WHAT THEY ACTUALLY HAVE SAID ABOUT THE ISSUE OF SMOKING INITIATION BY CHILDREN AND WHETHER OR NOT THEIR TESTING HAS SOME EFFECT? IS THAT FAIR TO SAY, SIR?
A. IT IS FAIR TO SAY THAT I HAVE NOT EXAMINED ANY INTERNAL COMPANY DOCUMENTS OF THE CIGARETTE INDUSTRY OTHER THAN THE ONES THAT I MENTIONED THAT HAVE COME TO LIGHT AND BEEN PRESENTED TO ME BY ATTORNEYS. AND THAT IS FOR THREE

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VERY SOLIDLY GOOD REASONS.
MS. CHABER: I'D MOVE TO STRIKE, YOUR HONOR, EVERYTHING AFTER --
THE COURT: I CAN STRIKE IT, BUT HE SAID IT SEVERAL OTHER TIMES WHEN YOU DIDN'T ASK ME TO STRIKE IT. SO IT REALLY IS BESIDE THE POINT.
BUT IF YOU WANT ME TO STRIKE THE REFERENCE TO "THREE SOLID GOOD REASONS," I WILL, BUT IT'S ALREADY IN THE RECORD ANYWAY.
MS. CHABER: THAT'S OKAY. I'D MOVE TO HAVE IT STRICKEN AT THIS POINT IN TIME.
THE COURT: I'LL STRIKE IT THIS TIME.
MS. CHABER: Q. WOULD YOU AGREE, SIR, THAT THERE ARE BOTH PSYCHOSOCIAL REASONS FOR SMOKING AND PHARMACOLOGICAL REASONS FOR SMOKING?
A. YOU HAVE GONE WAY BEYOND MY EXPERTISE, AND THAT'S -- I DON'T EVEN KNOW WHAT SOME CASE -- I'M NOT QUITE SURE WHAT THE DISCIPLINE IS YOU'RE TALKING ABOUT.

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THAT IS WAY BEYOND MY EXPERTISE. I'M SORRY.
Q. SIR, YOU KNOW THAT THERE ARE SOME PRODUCTS OUT THERE THAT PEOPLE USE BECAUSE THEY HAVE A NEED FOR THEM, LIKE THEY NEED TO WASH THEIR CLOTHES, AND OTHER PRODUCTS THAT PEOPLE MAY USE BECAUSE THEY HAVE A NEED FOR THEM BECAUSE OF A PHYSIOLOGICAL NEED?
A. AGAIN, ADDRESSING A PHYSIOLOGICAL NEED IS REALLY -- YOU'VE REALLY GONE WAY BEYOND MY EXPERTISE. I'M A MARKETING GUY. THAT'S JUST BEYOND MY EXPERTISE. IT SOUNDS LIKE IT'S THE MEDICAL PROFESSION TO ME.
Q. SIR, HAVE YOU LOOKED AT ANY OF THE MARKETING DOCUMENTS OF R.J. REYNOLDS OR PHILIP MORRIS OR ANY OTHER TOBACCO COMPANY TO SEE WHETHER THEY LOOK AT ISSUES SUCH AS PHARMACOLOGICAL OR PHYSIOLOGICAL NEED IN TERMS OF MARKETING THEIR PRODUCTS?
A. WE ARE GOING BACK OVER THE SAME TERRITORY AGAIN. AS I MENTIONED EARLIER -- I MEAN, GOSH, I HAVEN'T LOOKED AT ANY OF THE INTERNAL DOCUMENTS OF ANY OF THE TOBACCO COMPANIES, OTHER THAN THOSE THAT HAVE BEEN PRESENTED TO ME AT DEPOSITION OR TRIAL, OR THOSE THAT ARE PART OF, YOU KNOW, AN ATTACHMENT TO SOME EXPERT'S REPORT.
Q. AND, SIR, I GUESS THAT WOULD REMAIN TRUE ALSO FOR DETERMINING WHETHER OR NOT THE TOBACCO COMPANIES -- THE CIGARETTE MANUFACTURERS HAVE ATTEMPTED TO ENLARGE THEIR SHARE OF THE UNDER-18 MARKET THROUGH ANY MEANS?
A. THAT WOULD ALSO BE TRUE.
Q. YOU HAVE NOT LOOKED AT ANY DOCUMENTS ON THAT ISSUE.

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WOULD THAT ALSO BE TRUE AS TO DOCUMENTS RELATING TO AN ATTEMPT TO ENLARGE A MINOR OR YOUTH MARKET SHARE OF A PARTICULAR BRAND?

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MR. ESCHER: OBJECTION, YOUR HONOR. VAGUE.
AND ALSO, I BELIEVE IT'S CUMULATIVE, ARGUMENTATIVE.
THE COURT: IT IS REPETITIVE. I'M GOING TO SUSTAIN AND ASK MS. CHABER TO MOVE ON TO SOMETHING ELSE, PLEASE.
MS. CHABER: Q. DO YOU STILL HAVE THE 1994 SURGEON GENERAL'S REPORT UP THERE?
A. NO, I DO NOT.
Q. I'LL GET YOU A COPY.
SIR, LET ME READ YOU A CONCLUSION FROM THE 1994 SURGEON GENERAL'S REPORT ON PREVENTING TOBACCO USE AMONG YOUNG PEOPLE, AND ASK YOU WHETHER OR NOT YOU AGREE WITH THAT STATEMENT.
MR. ESCHER: OBJECTION, YOUR HONOR. OBJECT TO THE FORM OF THE QUESTION.
THE COURT: THE REPORT IS NOT IN EVIDENCE, I GUESS.
IS THAT THE BASIS OF THE OBJECTION?
MR. ESCHER: SHE IS NOT IMPEACHING ANY TESTIMONY AT THIS POINT, YOUR HONOR.
THE COURT: YES, I AGREE. I'LL SUSTAIN.
IF YOU WANT TO ASK HIM THE QUESTION, YOU CAN ASK HIM THE QUESTION WITHOUT REFERENCE TO THE DOCUMENT.
MS. CHABER: Q. SIR, IT'S TRUE, IS IT NOT,
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THAT "CIGARETTE ADVERTISING APPEARS TO AFFECT YOUNG PEOPLE'S PERCEPTION OF THE PERVASIVENESS, IMAGE AND THE FUNCTION OF SMOKING," IS IT NOT?
A. NO, THAT IS NOT ABSOLUTELY TRUE.
Q. AND, SIR, IT'S TRUE THAT "SINCE MISPERCEPTIONS IN THESE AREAS CONSTITUTE PSYCHOSOCIAL RISK FACTORS FOR THE INITIATION OF SMOKING, CIGARETTE ADVERTISING APPEARS TO INCREASE YOUNG PEOPLE'S RISK OF SMOKING"; TRUE OR NOT TRUE?
A. I DO NOT AGREE WITH THAT.
Q. AND, SIR, THOSE ARE TWO CONCLUSIONS THAT THE SURGEON GENERAL REACHED IN 1994, DID THEY NOT, IN THEIR 300-PAGE REPORT ON PREVENTING YOUTH TOBACCO USE AMONG YOUNG PEOPLE?
A. COULD YOU DIRECT ME TO WHERE YOU'RE READING, WHAT YOU ARE TALKING ABOUT, SO THAT I CAN READ IT AND THEN RESPOND AT LEAST TO WHAT YOUR QUESTION IS.
Q. THE PAGE I OPENED TO, SIR, PAGE 195, CONCLUSION 5.
A. CONCLUSION 5?
Q. CONCLUSION 5, SIR.
THE COURT: THIS IS PLAINTIFFS' 1944 FOR IDENTIFICATION, FOR THE RECORD?
MS. CHABER: YES.
AND I WOULD MOVE THIS INTO EVIDENCE, YOUR HONOR.
IT'S BEEN PREVIOUSLY ESTABLISHED BOTH THROUGH SEVERAL OTHER WITNESSES --
THE COURT: YOU DON'T NEED TO ARGUE.
LET'S JUST SEE IF THERE'S AN OBJECTION.

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MR. ESCHER: WE OBJECT, YOUR HONOR. HEARSAY.
THE COURT: SUSTAINED.
MS. CHABER: Q. DID I READ THAT CORRECTLY, SIR, THAT "CIGARETTE ADVERTISING APPEARS TO AFFECT YOUNG PEOPLE'S PERCEPTIONS OF THE PERVASIVENESS, IMAGE AND FUNCTION OF SMOKING" AS A CONCLUSION OF THE SURGEON GENERAL'S REPORT?
A. THAT'S PART OF THE CONCLUSION.
Q. DID I READ THAT SENTENCE CORRECTLY?
A. YOU READ THAT CORRECTLY. YOU READ THE FIRST SENTENCE CORRECTLY.
Q. THE SECOND SENTENCE: "SINCE MISPERCEPTIONS IN THESE AREAS CONSTITUTE PSYCHOSOCIAL RISK FACTORS FOR THE INITIATION OF SMOKING, CIGARETTE ADVERTISING APPEARS TO INCREASE YOUNG PEOPLE'S RISK OF SMOKING."
DID I READ THAT CORRECTLY, SIR?
A. YES, YOU DID. YOU READ IT CORRECTLY.
Q. DID THE SURGEON GENERAL ALSO CONCLUDE THAT CIGARETTE ADVERTISING USES IMAGES RATHER THAN INFORMATION TO PORTRAY THE ATTRACTIVENESS AND FUNCTION OF SMOKING?
MR. ESCHER: OBJECTION, YOUR HONOR. HEARSAY.
THE COURT: SUSTAINED.
MS. CHABER: Q. DOCTOR, YOU DON'T BELIEVE THAT CIGARETTE SMOKING -- STRIKE THAT.
YOU DON'T BELIEVE THAT CIGARETTE ADVERTISING PROMOTES INITIATION OF SMOKING AMONGST YOUTH, DO YOU?
A. NO, I DO NOT.
Q. AND YOU DO NOT BELIEVE THAT CIGARETTE ADVERTISING
4512
INCREASES YOUNG PEOPLE'S RISK OF SMOKING?
A. INCREASES YOUNG PEOPLE'S RISK OF SMOKING?
Q. THE RISK THAT THEY WILL START SMOKING.
A. I DON'T BELIEVE SO, NO.
Q. AND, SIR, YOU DON'T BELIEVE THAT CIGARETTE ADVERTISING IMAGES PORTRAY ATTRACTIVENESS IN THE FUNCTION OF SMOKING AND CORRELATE WITH PSYCHOSOCIAL FACTORS THAT APPEAL TO YOUNG PEOPLE, DO YOU?
MR. ESCHER: OBJECTION. VAGUE, YOUR HONOR.
THE COURT: DO YOU UNDERSTAND THE QUESTION?
THE WITNESS: NO, YOUR HONOR, I REALLY DO NOT.
THE COURT: SUSTAINED.
MS. CHABER: Q. SIR, DO YOU RECALL EARLIER THIS MORNING YOU TESTIFIED THAT YOU DIDN'T BELIEVE THAT CIGARETTE ADVERTISING CONVEYING INDEPENDENCE, ADVENTURE-SEEKING, YOUTHFUL ACTIVITIES THEMES, CORRELATED WITH PSYCHOSOCIAL FACTORS THAT APPEAL TO YOUNG PEOPLE; CORRECT?
A. NO, I DIDN'T TESTIFY TO THAT. I DON'T RECALL EVER EVEN USING THE WORD "PSYCHOSOCIAL." I JUST DON'T RECALL USING THOSE WORDS, NO.
Q. SIR, THERE ARE CERTAIN THEMES THAT I ASKED YOU ABOUT, SUCH AS INDEPENDENCE AND ADVENTURE-SEEKING, AND ASKED YOU WHETHER OR NOT CIGARETTE ADVERTISING APPEALED TO YOUTH'S CONNECTION WITH THOSE TYPES OF THEMES.
DO YOU RECALL THAT QUESTION?

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A. I DON'T RECALL YOUR QUESTION.
I DO RECALL WHAT I SAID, BUT I DON'T RECALL YOUR
4513
QUESTION SPECIFICALLY WHETHER -- I WOULDN'T WANT TO SAY, "GEE, THAT'S WHAT YOU SAID." NO.
Q. YOUR ANSWER WAS, SIR, THAT YOU DIDN'T THINK THAT THERE WAS SUFFICIENT DATA TO SAY THAT YOUTH WERE ATTRACTED TO ADVERTISING CONVEYING INDEPENDENCE OR ADVENTURE-SEEKING?
MR. ESCHER: OBJECTION, YOUR HONOR. THE FORM OF THE QUESTION.
THE COURT: SUSTAINED.
MS. CHABER: Q. SIR, DO YOU AGREE THAT ADVERTISING CONVEYS INDEPENDENCE, HEALTHFULNESS, ADVENTURE-SEEKING AND YOUTHFUL ACTIVITY THEMES THAT APPEAL TO YOUNG PEOPLE?
A. I HAVE, AS I MENTIONED EARLIER THIS MORNING, SOME REAL CONCERN ABOUT THAT, SIMPLY BECAUSE THERE IS DATA THAT COMES FROM THE UNIVERSITY OF MICHIGAN'S "MONITORING THE FUTURE" STUDY THAT WOULD INDICATE THAT THOSE -- AND ONE CAN REACH A CONCLUSION, AND I HAVE, THAT THOSE ARE NOT MAJOR FACTORS THAT PEOPLE ASSOCIATE WITH SMOKING BEHAVIOR, THAT SMOKERS ARE NOT INDEPENDENT, ADVENTURE-SEEKING AND SO FORTH.
AND THERE IS CLEARLY A LARGE NATIONAL STUDY THAT WOULD ARGUE AGAINST THE POINT THAT YOU'RE MAKING.
Q. SIR, YOU DISAGREE WITH THE SURGEON GENERAL OF THE UNITED STATES, WHO EXAMINED THE ISSUE OF PREVENTING TOBACCO USE AMONG YOUNG PEOPLE IN HIS CONCLUSION?
AND ACTUALLY, I SHOULD SAY "IN HER CONCLUSION," SINCE I BELIEVE THIS WAS JOCELYN ELDER'S REPORT --
MR. ESCHER: YOUR HONOR. EXCUSE ME.
MS. CHABER: Q. -- ON THE PSYCHOLOGY --
4514
THE COURT: JUST A SECOND. HOLD ON.
THERE'S AN OBJECTION.
MS. CHABER: I HADN'T FINISHED MY QUESTION, SO I WASN'T SURE.
THE COURT: I KNOW, BUT HE WAS TRYING TO PREVENT YOUR QUESTION.
MS. CHABER: OKAY.
MR. ESCHER: I'M OBJECTING TO THE FORM OF THE QUESTION, YOUR HONOR.
THE COURT: I DO NOT REMEMBER WHETHER DR. MARTIN SAID THAT HE CONSIDERED THAT REPORT IN RENDERING HIS OPINIONS IN THIS CASE.
HAS HE BEEN ASKED THAT QUESTION?
MS. CHABER: HE TESTIFIED --
THE COURT: LET ME JUST ASK YOU: DID YOU CONSIDER THAT 1994 SURGEON GENERAL'S REPORT IN CONNECTION WITH YOUR OPINIONS -- GIVING YOUR OPINIONS IN THIS CASE?
THE WITNESS: NO, YOUR HONOR.

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MS. CHABER: THAT IS CONTRARY TO HIS TESTIMONY ON FRIDAY. HE READ IT, YOUR HONOR. HE HAS EXAMINED IT. HE HAS READ IT. HE DOESN'T CONSIDER ACCEPTING IT IN HIS OPINIONS. AND THAT WAS THE TESTIMONY WE HAD ON FRIDAY.
THE COURT: LET ME REPHRASE THE QUESTION AND BE SURE.
THE QUESTION THAT I'M ASKING YOU ISN'T WHETHER YOU AGREE WITH IT OR WHETHER YOU'RE BASING ANY OPINIONS ON IT.
THE QUESTION IS: DID YOU CONSIDER IT IN

4515

CONNECTION WITH RENDERING YOUR OPINIONS IN THIS CASE?
THE WITNESS: IN CONJUNCTION WITH RENDERING MY OPINIONS IN THIS CASE, NO.
I HAVE READ THE DOCUMENT, AND THAT'S WHAT MY RESPONSE WAS. I DID NOT CONSIDER IT IN RENDERING MY OPINIONS IN THIS SPECIFIC CASE. NO, YOUR HONOR.
THE COURT: DID YOU CONSIDER IT IN RENDERING OPINIONS THAT YOU'VE GIVEN IN ANY OTHER CASE OR THAT IS THE SAME AS THE OPINION THAT YOU ARE GIVING IN THIS CASE?
THE WITNESS: NO, YOUR HONOR.
MS. CHABER: Q. YOU HAVE NEVER, SIR, EXAMINED THE 1994 300-PAGE REPORT BY THE SURGEON GENERAL OF THE UNITED STATES ON PREVENTING TOBACCO USE AMONG YOUNG PEOPLE IN FORMING YOUR OPINIONS, SIR, WITH RESPECT TO WHETHER OR NOT ADVERTISING AFFECTS YOUNG PEOPLE SMOKING?
A. I DID NOT.
I HAVE READ THE SURGEON GENERAL'S REPORT, OBVIOUSLY. AND I HAVE ENDEAVORED TO LOOK AT THE UNDERLYING DOCUMENTS THAT ARE CITED IN THE SURGEON GENERAL'S REPORT.
BUT DID I RELY UPON THE SURGEON GENERAL'S REPORT AS IT IS PRESENTED? THE ANSWER IS NO.
Q. I'M NOT ASKING YOU IF YOU RELIED ON IT.
I'M ASKING YOU IF YOU READ IT AND REJECTED IT, SIR?
A. NO, I DIDN'T REJECT IT.
Q. YOU JUST READ IT AND IT DIDN'T FORM ANY OPINION, PRO OR CON -- YOU JUST READ IT, AND IT HAS NO BASIS IN YOUR OPINIONS THAT YOU'VE COME TO RENDER HERE AS AN EXPERT ON

4516

ADVERTISING AND YOUTH; IS THAT CORRECT?
A. I THINK YOU'RE MISINTERPRETING WHAT I DID.
I'LL TRY AND MAKE IT AS CLEAR AS POSSIBLE. I READ IT. NO, I DID NOT REJECT IT. AND I DID NOT AGREE WITH IT.
I MEAN, I DID NEITHER OF THOSE ACTIONS. I READ IT, BECAUSE IT PROVIDES -- AS YOU ALREADY HAVE CHARACTERIZED IT, IT IS A LITERATURE SEARCH.
AND SO I USED IT AS A DEVICE FOR LOOKING AT THE VARIOUS UNDERLYING -- TO UNDERSTAND WHAT WERE THE UNDERLYING DOCUMENTS ASSOCIATED WITH IT.
AND THEN I LOOKED AT THOSE UNDERLYING

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DOCUMENTS,
MANY OF WHICH, I GUESS, IN THE DOCUMENT WE PROVIDED TO YOU
ARE THE LIST OF DOCUMENTS THAT I DID RELY UPON.
BUT SPECIFICALLY, NO, I DID NOT USE THE SURGEON
GENERAL'S REPORT. ONLY TO LOOK AT WHAT WERE THE DOCUMENTS
IN THE LITERATURE.
MS. CHABER: Q. SIR, YOU READ IT, YOU
CONSIDERED IT.
DID YOU ELIMINATE IT AS BEING AUTHORITATIVE?
A. I DID NEITHER. I JUST READ IT, AND THEN USED
THE
UNDERLYING DOCUMENTS THAT ARE IN IT. IT'S A LITERATURE
SEARCH, AND SO I WANTED TO LOOK AT THE DOCUMENTS THAT ARE
PART OF THE LITERATURE.
Q. AND YOU ARE THE ONE THAT CALLED IT A LITERATURE
SEARCH, NOT I.
I ASKED YOU, I BELIEVE ON FRIDAY, IF YOU WERE
AWARE OF THE PEER REVIEW PROCESS THAT THE SURGEON
GENERAL'S
4517
REPORT GOES THROUGH BEFORE IT IS PRODUCED AND PUT OUT
THERE
AS AN AUTHORITATIVE DOCUMENT, AND YOU WERE UNAWARE.
DO YOU RECALL THAT TESTIMONY ON FRIDAY?
A. SURE. I RECALL IT QUITE WELL.
Q. SIR, YOU REFERRED TO THE SURGEON GENERAL'S
REPORT, DID YOU NOT?
A. REFERRED TO IT?
Q. YOU REFERRED TO IT. YOU PICKED IT UP, YOU READ
IT, YOU REFERRED TO IT, YOU TOOK SOME THINGS OUT OF IT;
REFERRED TO IT?
A. I'M REALLY HAVING A HARD TIME FOLLOWING YOU. I
LOOKED AT IT. I READ IT. AND WHEN YOU SAY "PICKED A FEW
THINGS OUT OF IT," NO.
I THINK, GEE, I REALLY WENT IN AND TOOK A LOT
OF
THE UNDERLYING DOCUMENTS OUT OF HERE AND READ THE
UNDERLYING
DOCUMENTS."
I CAN GIVE YOU AN EXAMPLE, IF YOU WANT, OF AN
UNDERLYING DOCUMENT I READ, WHICH IS THAT THICK
(INDICATING).
Q. SIR, I'M TRYING FIND OUT WHAT YOU DID WITH
RESPECT TO THE SURGEON GENERAL'S REPORT.
YOU READ IT. SOMEHOW, THE INFORMATION IN IT
DID
NOT AFFECT YOUR OPINION, EITHER PRO OR CON.
YOU WERE TOTALLY NEUTRAL ABOUT THE INFORMATION
THAT YOU READ IN THE SURGEON GENERAL'S REPORT?
MR. ESCHER: OBJECTION, YOUR HONOR. THIS IS
CUMULATIVE AND UNNECESSARY, I BELIEVE.
THE COURT: I'M GOING TO ALLOW IT.
4518
YOU MADE THE OBJECTION ABOUT GOING INTO THE
DOCUMENTS UNDERLYING. SHE'S TRYING TO SEE IF SHE CAN LAY
A
FOUNDATION FOR THESE KINDS OF QUESTIONS OR NOT.
IT WAS YOUR OBJECTION THAT TRIGGERED THIS LINE
OF
EXAMINATION. I'M GOING TO LET HER PURSUE IT. AT LEAST,
I'M
GOING TO LET HER ASK THIS QUESTION.
THE WITNESS: I HAVE TO HAVE THE QUESTION READ

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BACK TO ME. I'M SORRY.
(RECORD READ)
THE WITNESS: I THINK THE WORD "NEUTRAL" MISCHARACTERIZES WHAT I HAVE BEEN TRYING TO SAY.
I READ THE REPORT. IT CERTAINLY IS A VALUABLE DOCUMENT. I'M NOT ARGUING THAT IT'S A VERY VALUABLE DOCUMENT, BECAUSE WHAT IT DID WAS PROVIDED ME WITH UNDERLYING -- THE DOCUMENTS THAT UNDERLIE THIS REPORT, WHICH I SPECIFICALLY LOOKED AT.
AND IN SOME CASES, THEY WERE MUCH, MUCH MORE HELPFUL IN ME FORMULATING AN OPINION AS OPPOSED TO THIS DOCUMENT ITSELF (INDICATING).
SO I TOOK THIS DOCUMENT. IS IT IN RELIANCE? IT MEANS I RELIED ON IT TO GET THE UNDERLYING DOCUMENTS THAT ARE CITED IN HERE AND TO REVIEW THEM.
MS. CHABER: Q. AND, SIR, IN DOING SO, IS IT FAIR TO SAY THAT YOU REJECTED THE CONCLUSION STATED BY THE SURGEON GENERAL OF THE UNITED STATES IN THEIR 1994 REPORT PREVENTING TOBACCO USE AMONG YOUNG PEOPLE THAT CIGARETTE ADVERTISING CONVEYS INDEPENDENCE, HEALTHFULNESS, ADVENTURE-SEEKING AND YOUTHFUL ACTIVITY THEMES THAT APPEAL
4519
TO YOUNG PEOPLE? IS IT FAIR TO SAY THAT, SIR?
MR. HARDY: YOUR HONOR, OBJECTION TO THAT. THAT IS ASKED AND ANSWERED, THAT VERY QUESTION.
MS. CHABER: I DON'T THINK SO.
THE COURT: I'LL ALLOW IT.
IF THERE'S AN ARGUMENT ABOUT WHETHER HE DID IT BEFORE, IT'S QUICKER TO DO IT AGAIN THAN IT IS TO WORRY ABOUT IT.
GO AHEAD AND ANSWER IT.
THE WITNESS: AS I LOOKED THROUGH THE UNDERLYING DOCUMENTS THAT ARE CONTAINED IN HERE --
MS. CHABER: YOUR HONOR, I WOULD MOVE TO STRIKE. THAT'S NOT MY QUESTION.
THE COURT: I DON'T KNOW WHETHER IT IS OR NOT BECAUSE --
MS. CHABER: MY QUESTION WAS WHETHER HE AGREED WITH THE STATEMENT -- THE CONCLUSION REACHED BY THE SURGEON GENERAL, AS STATED?
THE COURT: I DON'T KNOW UNTIL I HEAR MORE WORDS OUT OF HIS MOUTH WHETHER IT'S RESPONSIVE OR NOT.
YOU ARE GOING TO HAVE TO EITHER WITHDRAW THE QUESTION OR HEAR HIS ANSWER. THEN, IF YOU WANT TO MOVE TO STRIKE, YOU CAN.
I CAN'T TELL RIGHT NOW.
MS. CHABER: CAN I HAVE THE QUESTION READ BACK ONE MORE TIME, JUDITH, PLEASE.
(RECORD READ)
THE WITNESS: WELL FIRST OF ALL, IT'S YOUR
4520
PARAPHRASING OF WHAT IS CONCLUSION NO. 3 ON PAGE 195.
YOU ASKED ME WHETHER OR NOT I AGREED WITH THE CONCLUSION, AND YOU STATED THE CONCLUSION. YOU READ ME A CONCLUSION. YOU ASKED ME WHETHER I AGREED WITH IT.
AND I SAID TO YOU, "NO, I DO NOT AGREE WITH

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IT."
MS. CHABER: Q. AND, SIR, WOULD YOU AGREE THAT
YOUNG PEOPLE CONTINUE TO BE A STRATEGICALLY IMPORTANT MARKET
FOR THE TOBACCO INDUSTRY?
A. DO I AGREE WITH THAT?
Q. YES.
A. NO, I DO NOT.
Q. AND SIR, IS IT FAIR TO SAY THAT YOU HAVE NEVER BEEN CONSULTED BY THE FEDERAL TRADE COMMISSION OR ANY OTHER REGULATORY BODY FOR A CITY, COUNTY, STATE OR COUNTRY TO EVALUATE ADVERTISING AND ITS EFFECT ON YOUTH?
A. GOSH. I'M SORRY IF I'M NOT RESPONSIVE TO THE WAY YOU ASKED THE QUESTION BECAUSE -- BUT WHAT TROUBLES ME IS THAT I DID -- I DID EVALUATE ADVERTISING TOWARD YOUTH IN CONJUNCTION WITH A CASE BEFORE THE FEDERAL TRADE COMMISSION.
IT WAS NOT FOR THE FEDERAL TRADE COMMISSION, ALTHOUGH IT WAS REPORTED TO THEM. THAT WAS IN THE CASE OF BEVERAGES, AND IN PARTICULAR, SOFT DRINKS.
Q. SIR, IS IT FAIR TO SAY THAT YOU HAVE NEVER BEEN CONSULTED BY THE FEDERAL TRADE COMMISSION OR ANY OTHER REGULATORY BODY FOR A CITY, COUNTY, STATE OR COUNTRY TO EVALUATE CIGARETTE ADVERTISING AS IT RELATES TO YOUTH?
A. WELL, THAT WOULD BE -- I WAS NEVER RETAINED BY
4521
THEM, ALTHOUGH I WAS ASKED A LOT BY THE FEDERAL TRADE COMMISSION ON THAT SUBJECT IN A CASE.
BUT NO, I HAVEN'T BEEN RETAINED BY ANY GOVERNMENTAL BODY RELATIVE --
Q. I SAID "CONSULTED."
A. I WASN'T CONSULTED BY ANY GOVERNMENTAL BODY.
Q. SIR, IS IT FAIR TO SAY THAT YOU HAVE NEVER BEEN ASKED TO CONTRIBUTE TO ANY SURGEON GENERAL'S REPORT AS IT RELATES TO CIGARETTE SMOKING OR ADVERTISING?
A. OH, THAT'S TRUE.
MS. CHABER: I HAVE NOTHING FURTHER, YOUR HONOR.
THE COURT: OKAY. DOES ANYBODY HAVE ANYTHING FURTHER FOR DR. MARTIN?
MR. ESCHER: I HAVE A FEW QUESTIONS, YOUR HONOR.
THE COURT: MS. CHABER, IS THAT THE COURT'S COPY OR YOUR COPY OF THE REPORT?
MS. CHABER: I BELIEVE IT'S -- THE COURT HAS ITS OWN COPY, SO IT'S MINE.
THE COURT: THAT MAY BE YOURS.
MS. CHABER: YES.

REDIRECT EXAMINATION

BY MR. ESCHER: Q. GOOD MORNING, DOCTOR.
A. GOOD MORNING.
Q. HI.
YOU WERE ASKED A FEW QUESTIONS DURING CROSS-EXAMINATION ABOUT YOUR COMPENSATION IN CONNECTION WITH THIS CASE AND OTHERS RELATING TO CIGARETTE ADVERTISING.
4522

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DO YOU REMEMBER THAT?
A. YES, I DO.
Q. AND HAVE YOU EVER, IN ANY YEAR, RECEIVED AS MUCH AS 10 PERCENT OF YOUR TOTAL INCOME FROM YOUR EXPERT WITNESS WORK IN CONNECTION WITH CIGARETTE ADVERTISING?
A. OH, NO, NOT EVEN CLOSE.
Q. AND DO YOU THINK THAT THE TOTAL AMOUNT OF YOUR COMPENSATION RELATING TO EXPERT WITNESS WORK WITH RESPECT TO CIGARETTE ADVERTISING OVER THE YEARS THAT YOU'VE BEEN RETAINED TO DO THAT IS LESS THAN 5 PERCENT OF YOUR TOTAL INCOME?
A. GEE, I GUESS I COME IN AROUND 2, 3 PERCENT MAYBE.
Q. NOW, WE TALKED A LITTLE BIT ABOUT THE ISSUE OF PROMOTIONAL ACTIVITIES RELATING TO CIGARETTE ADVERTISING AND PROMOTIONS THAT ARE REPORTED TO THE FEDERAL TRADE COMMISSION.
DO YOU REMEMBER THAT?
A. YES.
Q. AND DO YOU REMEMBER DRAWING A DISTINCTION BETWEEN ADVERTISING MONEY AND PROMOTIONAL MONEY?
A. YES, I DO.
Q. AND YOU CONSIDERED THAT SOME OF THE PROMOTIONAL ACTIVITIES WERE, IN FACT, MORE REASONABLY VIEWED AS BEING PART OF PRICING; IS THAT RIGHT?
A. THAT'S CORRECT.
Q. AND DO YOU HAVE A SENSE FOR -- OF THE TOTAL AMOUNT OF DOLLARS IN CIGARETTE ADVERTISING AND PROMOTION AS REPORTED TO THE FEDERAL TRADE COMMISSION, APPROXIMATELY WHAT

PERCENT OF THE TOTAL SPENDING RELATES TO THINGS THAT ARE PURELY PRICE?
A. WELL, I WON'T USE THE WORD "PURELY PRICE" BUT MOSTLY PRICE.
I DON'T WANT TO LEAVE A WRONG IMPRESSION, BUT IT'S MOSTLY PRICE-ORIENTED, AND IT'S OVER 50 PERCENT OF THE TOTAL AMOUNT.
Q. AND THE AMOUNT THAT RELATED TO ENTERTAINMENT ACTIVITIES, LIKE CONCERTS AND THE LIKE, DID YOU HAVE --
A. LIKE SOUTH OF MARKET STREET?
THE COURT: ONE AT A TIME.
THE WITNESS: I'M SORRY. LIKE SOUTH OF MARKET STREET?
MR. ESCHER: Q. LIKE THAT, AS AN EXAMPLE.
A. YES. THE PUBLIC ENTERTAINMENT, YES. IT'S 2.1 PERCENT, WHICH MEANS ABOUT 2.1 CENTS ON EVERY -- FOR EVERY DOLLAR SPENT TOTALLY.
Q. DOCTOR, YOU WERE ASKED SOME QUESTIONS ABOUT THE CONCLUSIONS OF THE SURGEON GENERAL'S REPORT IN 1994.
DO YOU REMEMBER THAT?
A. THAT SEEMED TO BE WHAT I WAS BEING ASKED HERE, YES.
Q. OKAY. YOU OFFERED THREE GOOD REASONS THAT YOU DECIDED NOT TO LOOK AT INTERNAL COMPANY DOCUMENTS.
WHAT WERE THOSE REASONS?

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A. WELL, THE FIRST IS KIND OF LIKE WHAT I MENTIONED HERE BEFORE. WHEN I READ THE NEWS REPORTS, THERE ARE THOUSANDS OR MILLIONS OF DOCUMENTS.

4524

SO PHYSICALLY, I JUST -- YOU COULDN'T LOOK AT ALL OF THOSE DOCUMENTS. AND JUST LOOKING AT THE TITLE OF THEM WOULD NOT BE ENOUGH.

YOU'D LITERALLY HAVE TO LOOK AT EVERY SINGLE DOCUMENT AND REVIEW IT. SO THERE'S JUST A PHYSICAL PROBLEM THAT'S ASSOCIATED WITH THAT.

AND THE SECOND PROBLEM THAT YOU REALLY HAVE IN LOOKING AT ANY KIND OF DOCUMENTS OR LETTERS OR THINGS OF THAT SORT, IS THAT YOU HAVE TO UNDERSTAND THE CONTEXT IN WHICH THOSE DOCUMENTS WERE WRITTEN, TO WHOM THEY WERE PRESENTED, AND WHO WERE THE PEOPLE WHO WROTE THEM. AND IN SOME CASES, YOU KNOW, MAYBE THEY WEREN'T EVEN DELIVERED TO SOMEBODY.

AND THE THEN THIRD, PERHAPS THE MOST IMPORTANT REASON FOR NOT LOOKING AT INTERNAL COMPANY DOCUMENTS IS BECAUSE THEY WERE NOT WHAT I WAS LOOKING FOR OR WHAT I VIEWED AS WHAT I WAS DOING IN THIS CASE.

THEY WERE NOT SOMETHING THAT I WAS GOING TO LOOK AT, BECAUSE I WAS LOOKING AT SMOKING INITIATION, SMOKING BEHAVIOR, NOT -- I WASN'T SUPPOSED TO GO AND REVIEW COMPANY DOCUMENTS AND SEE WHAT THEY WERE LIKE AND CHARACTERIZE THEM. THAT WAS NOT MY JOB IN THIS CASE.

Q. SO IS IT FAIR TO SAY, FROM YOUR PERSPECTIVE, THAT WHATEVER IS IN THE COMPANY FILES IS IRRELEVANT TO YOUR OPINIONS IN THIS CASE?

A. AS FAR AS THE OPINIONS I HAVE IN THIS CASE, THEY WERE IRRELEVANT.

Q. NOW, YOU SAID THAT YOU'D LOOKED AT SOME OF THE

4525

UNDERLYING ARTICLES AND MATERIALS THAT ARE CITED IN THE

1994

SURGEON GENERAL'S REPORT?

A. YES.

Q. AND YOU WENT AND LOOKED AT THE PRIMARY SOURCES YOURSELF?

A. YES, I DID.

Q. DID YOU SEE ANY EXAMPLES WHERE THE PRIMARY SOURCE DID NOT IN FACT SUPPORT THE SURGEON GENERAL'S CONCLUSIONS?

A. IN FACT, ONE OF THE THINGS THAT BOTHERED ME -- AND SO WE GET THE PAGE COUNT, THE SURGEON GENERAL'S REPORT IS -- I THINK I WAS TOLD IT WAS 300 OR SOME PAGES LONG.

THERE'S A STATEMENT IN THE SURGEON GENERAL'S REPORT THAT ADVERTISING CAN AFFECT PRIMARY DEMAND FOR PRODUCTS.

Q. IS THAT CONCLUSION GENERALLY INCONSISTENT WITH YOUR UNDERSTANDING OF THE PRINCIPLES THAT APPLY IN YOUR AREA OF MARKETING?

A. THAT'S INCONSISTENT.

WHAT REALLY BOTHERED ME ABOUT IT WAS THE SOURCE THAT WAS BEING CITED. THIS IS -- THE SOURCE IS A 1982

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TEXTBOOK BY MICHAEL RAY, R-A-Y, WHO IS FROM STANFORD.
AND I WAS ALMOST SHOCKED WHEN I SAW THAT THERE'S
NO PAGE CITATION IN THE SURGEON GENERAL'S REPORT, SO IT
MAKES IT REALLY DIFFICULT.
AND THE REASON I WAS SURPRISED IS, I USED THAT
TEXTBOOK IN TEACHING ADVERTISING MANAGEMENT, AND I KNOW
MICHAEL RAY. I MEAN, AND I HAVE KNOWN MICHAEL RAY A LONG
TIME. IN FACT, HE'S EVEN BEEN A MEMBER -- OR WAS A MEMBER
4526
OF THE EDITORIAL REVIEW BOARD ON THE JOURNAL.
SO I HAVE GONE AND LOOKED FOR THE BOOK. AND I
CANNOT FIND ANYTHING IN THAT TEXTBOOK THAT EVEN COMES CLOSE
TO SUGGESTING THAT PROPOSITION.
AND I'M CONCERNED THAT SOMEBODY EITHER MISQUOTED,
MISUNDERSTOOD OR MAYBE THEY JUST MADE A CLERICAL ERROR. I
DON'T KNOW. BUT THERE'S AN EXAMPLE OF WHY ONE WANTS TO LOOK
AT THE UNDERLYING DOCUMENTATION.
Q. AND ARE YOU AWARE, DOCTOR, THAT DR. RICHARD
POLLAY WAS ONE OF THE AUTHORS OF THE CHAPTER IN THE 1994
SURGEON GENERAL'S REPORT THAT DEALT WITH THE ISSUE OF
CIGARETTE ADVERTISING?
A. OH, YES.
Q. THAT'S THE CHAPTER IN WHICH THIS CITATION
APPEARED THAT YOU JUST CITED?
A. I THINK IT MIGHT BE THAT CHAPTER. I DON'T HAVE
THE REPORT, BUT I THINK IT MAY BE.
MR. ESCHER: I DON'T HAVE ANY FURTHER QUESTIONS.
THANK YOU VERY MUCH, DOCTOR.
THE COURT: DOES ANYBODY HAVE ANYTHING FURTHER?

RECROSS-EXAMINATION

BY MS. CHABER: Q. SIR, ISN'T IT TRUE THAT TO
EXAMINE AND WRITE SOME ARTICLES CRITICIZING SOME OF THE
PEOPLE WHO HAVE WRITTEN THE PRIMARY RESEARCH, R.J. REYNOLDS
GAVE YOU $90,000 TO PERFORM THAT STUDY?
A. NO. THEY DIDN'T GIVE ME $90,000 TO DO WHAT YOU
JUST SAID, NO.
4527
Q. THEY DID GIVE YOU $90,000, SIR, TO FUND A STUDY,
DID THEY NOT?
A. WELL, THEY GAVE ME $90,000 IN RESPONSE TO A
REQUEST ON MY PART.
Q. OH, YOU --
A. THEY DIDN'T COME AND JUST SAY, "HERE'S $90,000."
Q. YOU SOLICITED THEM, SIR, FOR FUNDING SO THAT YOU
COULD WRITE SOMETHING CRITICAL OF SOME OF THE PEOPLE WHO DID
THE UNDERLYING RESEARCH; CORRECT?
A. NO. THAT WASN'T MY MOTIVE. YOU TOTALLY
MISCHARACTERIZE. I'M SORRY, YOU KNOW. GOSH, I WENT AND GOT
RESEARCH FUNDING, TRUE, FROM R.J. REYNOLDS, NOT WHILE I

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WAS
INVOLVED IN ANY LITIGATION FOR THE COMPANY.
AND I SENT THEM A RESEARCH PROPOSAL TO EXAMINE THE RESEARCH THAT HAD BEEN DONE SPECIFICALLY AND REPORTED SPECIFICALLY IN THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION.
MY OBJECTIVE WAS NOT TO COME OUT AND BE CRITICAL. MY OBJECTIVE WAS TO GO OUT AND LOOK AT THIS AND MAKE A FAIR EVALUATION OF THAT RESEARCH.
Q. SIR, WASN'T YOUR PROPOSAL TO SOLICIT A CRITIQUE ON THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION'S ARTICLES ON ADVERTISING AND ITS EFFECT ON YOUTH?
A. YEAH. BUT THE WORD "CRITIQUE" IN MY LANGUAGE IS
TO LOOK AT THE RESULTS.
WHAT I PROPOSED TO DO IS THAT I WOULD, INDEPENDENTLY, WITH ABSOLUTELY NO STRINGS ATTACHED FROM R.J.
REYNOLDS, I WOULD LOOK AT THE DOCUMENTS AND REPORT THE
4528
RESULTS.
AND THEY WOULD HAVE ABSOLUTELY NO CONTROL OVER WHAT WAS DONE IN THAT RESEARCH, NOR WHAT THAT RESEARCH WOULD
BE. I'M THE ONE THAT MADE UP THE PROPOSAL.
Q. SIR, YOU DIDN'T GO TO THE AMERICAN CANCER SOCIETY
WITH THAT PROPOSAL, DID YOU?
A. NO, I DIDN'T. IT WAS -- IN FACT, THE PROPOSAL JUST HAPPENED TO COME ABOUT IN A CHANCE MEETING WITH A FORMER STUDENT.
I SAID, "WOULD YOU FUND SOME RESEARCH?" AND HE SAID "YES." AND I SENT THEM A PROPOSAL.
Q. AND R.J. REYNOLDS GAVE YOU $90,000 TO WRITE THIS
RESEARCH; CORRECT?
A. NO, THEY DID NOT. THAT'S NOT A FAIR CHARACTERIZATION.
THEY GAVE ME $90,000 TO PAY THE EXPENSES AND TO DO THE RESEARCH, NOT TO JUST TO WRITE THE RESEARCH.
Q. SIR, THERE ARE THOUSANDS OR MILLIONS OF DOCUMENTS, I THINK YOU SAID, AND THERE'S SOME PHYSICAL PROBLEM OF LOOKING AT THESE DOCUMENTS.
IS THAT WHAT YOU SAID TO MR. ESCHER JUST NOW? DID I UNDERSTAND THAT CORRECTLY?
A. WELL, AS I HEARD THE REPORT ON HOW MANY DOCUMENTS
THERE WERE, IT OCCURRED TO ME IT PROBABLY WOULD BE KIND OF DIFFICULT.
Q. SIR, YOU ARE APPARENTLY COMPUTER-LITERATE.
YOU DO THESE NICE POWER POINT PRESENTATIONS. THOSE ARE DONE ON A COMPUTER, ARE THEY NOT?
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A. WELL, YEAH. I DO MAKE SOME POWER POINT PRESENTATIONS.
I DON'T KNOW WHETHER YOU'D CALL ME COMPUTER-LITERATE.
Q. YOU KNOW HOW TO SEARCH THE INTERNET, DON'T YOU, SIR?
A. YES.
Q. YOU KNOW HOW TO GO ON TO THE DOCUMENT SITES THAT
EACH OF THE TOBACCO COMPANIES HAVE, THAT THEY HAVE THEIR

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DOCUMENTS ON, AND THAT ALLOW YOU TO SEARCH THOSE DOCUMENTS BY NOT ONLY TITLE BUT BY CONTENT?

A. I SUPPOSE. I'VE NEVER DONE THAT.

Q. YOU'VE NEVER TRIED TO LOOK AND TYPE IN THE WORDS "ADVERTISING, CHILDREN, YOUTH, ADVERTISING," ANYTHING LIKE THAT IN AN R.J. REYNOLDS DOCUMENT SITE OR A PHILIP MORRIS DOCUMENT SITE?

A. WELL, I WOULD BE VERY HESITANT TO DO THAT, AND I WILL TELL YOU WHY.

THAT MEANS THAT I WOULD THEN HAVE BEEN RELYING UPON SOMEBODY ELSE'S CODING SYSTEM.

SO WHEN I SAID THAT IF I WANTED TO LOOK AT DOCUMENTS, IF I WERE GOING TO LOOK AT DOCUMENTS, I WOULD WANT TO LOOK AT ALL OF THE DOCUMENTS AND READ THEM.

I FOUND IN A LOT OF INSTANCES THAT THOSE CODING SYSTEMS, YOU KNOW, YOU PUT THE WORD IN "SEARCH FOR," DON'T ALWAYS WORK SO WELL.

I KNOW WE ALL THINK THAT THE COMPUTER SYSTEMS WORK PERFECTLY, BUT THEY DON'T. AND SO I WOULD BE VERY,

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VERY HESITANT TO RELY ON THAT.

REMEMBER, THERE WERE TWO OTHER REASONS WHY I DIDN'T LOOK AT THOSE DOCUMENTS.

Q. WE ARE ON THE FIRST ONE.

A. RIGHT.

Q. WE ARE ON THIS FIRST REASON.

SO THERE MIGHT BE DOCUMENTS THAT ARE MISCODED; IS THAT A FAIR REITERATION OF WHAT YOU JUST SAID?

A. WELL, THEY MAY BE MISCODED OR NOT CODED AT ALL.

Q. BUT YOU DIDN'T LOOK TO SEE IF THERE WERE ANY DOCUMENTS AT ALL THERE, DID YOU?

A. THAT'S MISCHARACTERIZES. I THINK THAT'S WRONG TO SAY.

I DID NOT GO IN ON THE INTERET AND SEARCH FOR COMPANY DOCUMENTS. I AGREE.

Q. AND YOU DIDN'T ASK R.J. REYNOLDS WHAT DOCUMENTS THEY HAD IN THEIR POSSESSION THAT THEY COULD GIVE TO YOU OR WHAT THE CONTEXT FOR THOSE DOCUMENTS WERE, DID YOU?

A. WELL, AS YOU AND I KNOW, I HAVE NEVER HAD ANY CONTACT ON THAT SUBJECT OR ANY OTHER RESEARCH WITH ANYBODY AT R.J. REYNOLDS.

Q. SIR --

A. I WOULD NOT -- AS YOU ASKED ME IN MY DEPOSITION, I WOULD NOT ASK AN ATTORNEY TO FURNISH ME WITH THOSE DOCUMENTS SIMPLY BECAUSE -- I MEAN, THINK OF IT, I WOULD COME HERE AND SAY "YEAH, I LOOKED AT THESE DOCUMENTS. THESE ARE THE ONES THE COMPANY GAVE ME." I MEAN, THAT WOULD BE SO UNSCIENTIFIC, AND SO INVALID.

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SO NO, I WASN'T GOING TO GO TO R.J. REYNOLDS AND SAY, "HEY, GIVE ME THE DOCUMENTS."

Q. YOU NEVER ASKED AN ATTORNEY FROM R.J. REYNOLDS IF YOU COULD HAVE ACCESS TO THE INTERNAL DOCUMENTS OF THE

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COMPANY, OF THE R.J. REYNOLDS COMPANY; IS THAT TRUE?
MR. ESCHER: OBJECTION, YOUR HONOR. THIS QUESTION HAS BEEN ASKED AND ANSWERED.
THE COURT: YOU'VE ANSWERED THAT, HAVEN'T YOU?
THE WITNESS: I BELIEVE I HAVE.
THE COURT: YOU CAN GO AHEAD AND ANSWER ONE MORE TIME. LET'S NOT BE REPETITIVE ON THIS.
YOU CAN ANSWER IT ONE MORE TIME, BUT LET'S NOT GO BACK OVER THIS.
THE WITNESS: NO, I DIDN'T GO TO THE ATTORNEYS AND SAY, "GIVE ME ACCESS TO -- OR GIVE ME THE DOCUMENTS."
MS. CHABER: Q. SIR, IF I UNDERSTAND CORRECTLY, HAD YOU LOOKED AT ANY DOCUMENTS, IT WOULD BE IRRELEVANT TO YOUR OPINIONS, NO MATTER WHAT THEY SAID, CORRECT?
A. WELL, IT IS NOT WHAT I WAS LOOKING AT.
I WAS NOT THERE TO EVALUATE INTERNAL COMPANY DOCUMENTS. THAT'S THE POINT.
Q. IT WOULD BE IRRELEVANT TO YOUR OPINIONS, WOULD IT NOT, NO MATTER WHAT IT SAID; IS THAT CORRECT?
A. IT WOULD HAVE TO BE IRRELEVANT, BECAUSE THAT WAS NOT WHAT I WAS LOOKING AT, WHAT WAS THE INTERNAL COMPANY DOCUMENTS.
MS. CHABER: I HAVE NOTHING FURTHER.

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THE COURT: MAY DR. MARTIN BE EXCUSED?
MR. ESCHER: YES, YOUR HONOR.
THE COURT: MS. CHABER, MAY HE BE EXCUSED?
MS. CHABER: YES.
THE COURT: YOU ARE EXCUSED.
(WITNESS EXCUSED)
THE COURT: OKAY. WHO IS CALLING THE NEXT WITNESS AND WHO IS THE NEXT WITNESS?
MR. FURR: R.J. REYNOLDS CALLS DR. WILLIAM WECKER.
THE CLERK: PLEASE COME FORWARD. PLEASE STAND RIGHT HERE AND RAISE YOUR RIGHT HAND. THIS WAY, PLEASE.

TESTIMONY OF
WILLIAM WECKER, PH.D,

A WITNESS CALLED ON BEHALF OF THE DEFENSE, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:
THE CLERK: PLEASE STATE YOUR NAME.
THE WITNESS: WILLIAM WECKER, W-E-C-K-E-R.
THE CLERK: THANK YOU. PLEASE TAKE THE STAND.
MR. FURR: YOUR HONOR, LET ME HAND THE CLERK THREE-HOLE COPIES OF THE DEMONSTRATIVES FOR DR. WECKER.
I ALSO HAVE A COPY FOR THE COURT, SINCE HE'S UNABLE TO SEE WHAT WE ARE TALKING ABOUT.
THE COURT: OKAY. THANK YOU.

DIRECT EXAMINATION

BY MR. FURR: Q. GOOD MORNING, DR. WECKER.
A. GOOD MORNING.

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Q. WOULD YOU BEGIN BY INTRODUCING YOURSELF TO THE JURY, PLEASE.
A. I'M WILLIAM WECKER. I LIVE HERE, NEARBY IN NOVATO, CALIFORNIA, JUST NORTH A COUPLE OF MINUTES.

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Q. DR. WECKER, YOU ARE A STATISTICIAN; IS THAT CORRECT?
A. THAT'S RIGHT.
Q. YOU ARE MARRIED, AREN'T YOU, SIR?
A. YES.
Q. HOW LONG HAVE YOU BEEN MARRIED?
A. I BETTER GET THIS RIGHT.
Q. THIS IS NOT A GOOD START FOR A STATISTICIAN, DOCTOR.
A. 35 YEARS.
Q. LET ME ASK AN EASIER QUESTION.
HOW MANY CHILDREN DO YOU HAVE?
A. THREE, AND ONE GRANDCHILD.
Q. OKAY. NOW, YOU ARE A PH.D. STATISTICIAN, NOT A MEDICAL DOCTOR; IS THAT CORRECT?
A. THAT'S RIGHT.
Q. DR. WECKER, YOU ARE NOT HERE TO OFFER MEDICAL OPINIONS IN THIS CASE, ARE YOU, SIR?
A. THAT'S RIGHT.
Q. FOR EXAMPLE, YOU ARE NOT HERE TO OFFER AN OPINION AS TO THE CAUSE OF MRS. WHITELEY'S CANCER, ARE YOU, SIR?
A. I'M NOT.
Q. I HAVE ASKED YOU TO COME HERE AND PROVIDE EXPERT OPINIONS AS A STATISTICIAN, CORRECT?

4534

A. THAT'S RIGHT.
Q. OKAY. WELL, THE JURY HAS HEARD A LOT ABOUT STATISTICS BUT WE HAVEN'T HAD A STATISTICIAN TESTIFY YET.
COULD YOU BEGIN BY EXPLAINING TO THE JURY WHAT PROFESSIONAL STATISTICIANS DO FOR A LIVING.
A. WELL, WE'RE THE ONES THAT ARE NOT PURELY RESEARCHERS, THAT ACTUALLY DO STATISTICS. THEY COLLECT DATA AND THEY ANALYZE DATA. THEY'RE INVOLVED FROM BEGINNING TO END IN THE DESIGN OF THE DATA COLLECTION SYSTEM, SOMETIMES CALLED THE EXPERIMENT, THROUGH THE ACTUAL COLLECTION OF THE DATA.
AND THEN THE ANALYSIS, THE STATISTICIAN DETERMINES WHAT MAY THEN VALIDLY BE SAID ABOUT THE DATA THAT HAS BEEN COLLECTED.
Q. LET ME APPROACH IT THIS WAY.
THE JURY HAS HEARD A LOT ABOUT EPIDEMIOLOGY. LET ME ASK YOU TO EXPLAIN TO THE JURY HOW STATISTICS IS RELATED TO EPIDEMIOLOGY.
A. EPIDEMIOLOGY IS STATISTICS. STATISTICS CAN BE APPLIED AND IS APPLIED TO A WHOLE RANGE OF DIFFERENT AREAS.
WHEN STATISTICS IS APPLIED TO ISSUES OF HUMAN HEALTH, WE CALL IT THEN EPIDEMIOLOGY.
Q. DR. WECKER, I WANT YOU TO ASSUME THAT CERTAIN OF PLAINTIFFS' EXPERTS, INCLUDING DR. DAVIS, HAVE TESTIFIED THAT 420,000 DEATHS ARE CAUSED EACH YEAR BY SMOKING.
DO YOU UNDERSTAND?
A. YES.
Q. I WOULD ALSO LIKE FOR YOU TO ASSUME THAT CERTAIN

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OF PLAINTIFFS' EXPERTS HAVE TESTIFIED, AGAIN INCLUDING DR. DAVIS, THAT ONE-IN-TWO REGULAR LONG-TERM SMOKERS WILL DIE AS A RESULT OF A DISEASE CAUSED BY THEIR SMOKING.
ARE YOU WITH ME THERE, SIR?
A. YES.
Q. DR. WECKER, ARE YOU FAMILIAR WITH THE TYPES OF ANALYSES THAT HAVE BEEN PERFORMED TO REACH THOSE TYPES OF SMOKING-RELATED MORTALITY ESTIMATES?
A. YES, I'M FAMILIAR WITH THOSE.
Q. AND ARE THOSE TYPES OF ANALYSES STATISTICAL IN NATURE?
A. YES, THEY'RE ENTIRELY STATISTICAL IN THAT THEY RESULT IN FROM A STATISTICAL FORMULA.
Q. AND DR. WECKER, ARE YOU PREPARED TO OFFER TO THE JURY YOUR EXPERT STATISTICAL OPINION AS TO WHETHER OR NOT THOSE ANALYSES THAT I HAVE ASKED YOU TO ASSUME ARE ACCURATE AND RELIABLE FROM A STATISTICAL PERSPECTIVE?
A. YES, I CAN OFFER AN OPINION ON THAT.
Q. BEFORE WE GET TO YOUR OPINIONS, LET'S BACK UP, AND LET ME ASK YOU TO DESCRIBE YOUR FORMAL EDUCATION AND EXPERIENCE AS A STATISTICIAN.
AND LET'S START WITH THE EDUCATION.
A. OKAY. I GRADUATED IN 1963 FROM THE UNITED STATES AIR FORCE ACADEMY. AND THEN, AFTER A NUMBER OF YEARS OF MILITARY SERVICE, I RETURNED AS A CIVILIAN TO THE UNIVERSITY OF MICHIGAN, WHERE I RECEIVED THE MASTER OF SCIENCE AND THE PH.D. DEGREE IN STATISTICS AND APPLIED MATHEMATICS. THAT WAS ABOUT 1972.
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Q. YOU GOT YOUR PH.D. IN STATISTICS AND APPLIED MATHEMATICS FROM THE UNIVERSITY OF MICHIGAN IN 1972?
A. RIGHT.
Q. NOW, YOU MENTIONED THAT YOU -- THERE WAS A PERIOD OF TIME IN WHICH YOUR EDUCATION WAS INTERRUPTED FOR MILITARY SERVICE; IS THAT CORRECT, SIR?
A. YOU CAN PUT IT THAT WAY. I DIDN'T THINK IT WAS INTERRUPTED.
Q. THAT'S NOT THE WAY YOU PUT IT?
A. IT WASN'T INTERRUPTED. IT WAS MY PROFESSIONAL DUTY. I WAS AN OFFICER IN THE AIR FORCE FOR A NUMBER OF YEARS.
Q. IN FACT, YOU WERE A FIGHTER PILOT IN THE AIR FORCE FOR A NUMBER OF YEARS, WEREN'T YOU, SIR?
A. YES.
Q. LET'S GO BACK TO YOUR EDUCATION.
AFTER YOU RECEIVED YOUR PH.D., WHAT DID YOU DO NEXT PROFESSIONALLY?
A. I ACCEPTED A JOB ON THE FACULTY AS AN ASSISTANT PROFESSOR AT THE UNIVERSITY OF CHICAGO.
Q. HOW LONG WERE YOU AT THE UNIVERSITY OF CHICAGO?
A. ABOUT 12 YEARS.
Q. AND DID YOU TEACH APPLIED MATHEMATICS AND STATISTICS AT THE UNIVERSITY OF CHICAGO?
A. YES, I DID, AS WELL AS THEORETICAL AREAS.

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Q. DID YOU ALSO CONDUCT RESEARCH IN MATHEMATICAL AND STATISTICAL AREAS WHILE YOU WERE AT THE UNIVERSITY OF CHICAGO?

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A. YES. THAT'S A MAJOR RESEARCH UNIVERSITY. SO IF ANYTHING, THE LION'S SHARE OF THE JOB WAS RESEARCH.

Q. I ASSUME YOU CAME IN AS AN ASSISTANT PROFESSOR; IS THAT CORRECT?

A. RIGHT.

Q. WERE YOU SUBSEQUENTLY PROMOTED TO ASSOCIATE PROFESSOR?

A. RIGHT. THAT'S THE NEXT ONE.

Q. YOU STAYED THERE FOR ABOUT 12 YEARS.

THEN IN 1984, YOU LEFT THE UNIVERSITY OF CHICAGO, CORRECT?

A. RIGHT.

Q. AND WHERE DID YOU GO FROM THERE?

A. I ACCEPTED AN OFFER FROM THE UNIVERSITY OF CALIFORNIA AT DAVIS.

Q. WHAT TYPE OF POSITION WAS THAT AT THE UNIVERSITY OF CALIFORNIA?

A. IT'S EXACTLY THE SAME THING, TEACHING AND RESEARCH IN THE GRADUATE SCHOOL. DOING THE SAME KIND OF WORK, JUST DOING IT IN A NICER CLIMATE.

Q. DR. WECKER, WE HAVE BEEN DOING PRETTY WELL SO FAR. ONE THING YOU HAVE TO BE CAREFUL ABOUT, THAT YOU ALLOW ME TO FINISH MY QUESTION BEFORE YOU BEGIN ANSWERING THE QUESTION, BECAUSE THE COURT REPORTER HAS TROUBLE GETTING US BOTH AT THE SAME TIME. OKAY?

A. I UNDERSTAND.

Q. NOW, AT THE UNIVERSITY OF CALIFORNIA, YOU BECAME A FULL PROFESSOR; IS THAT CORRECT?

4538

A. YES.

Q. AND AS A FULL PROFESSOR, DID YOU HAVE A TENURED POSITION?

A. YES.

Q. WHAT DOES IT MEAN TO HAVE A TENURED POSITION?

A. THAT'S A UNIVERSITY THING. IT MEANS, BASICALLY, UNLESS YOU SHOOT SOMEBODY, THEY CAN'T FIRE YOU.

Q. SO YOU WERE THERE FOR LIFE, I TAKE IT, BARRING THE TYPE OF OFFENSE THAT YOU JUST DESCRIBED?

A. YES.

Q. WHAT WERE YOU DOING AT THE UNIVERSITY OF CALIFORNIA?

A. SAME THING AS THE UNIVERSITY OF CHICAGO. TEACHING AND RESEARCH AND STATISTICS AND APPLIED MATHEMATICS.

IF THERE IS WAS ANY DIFFERENCE AT ALL, I DID MORE WORK IN COMPUTER SCIENCE, BECAUSE COMPUTERS WERE BECOMING MORE AND MORE IMPORTANT AS TIME WENT ON.

Q. WHAT TYPE OF RESEARCH WERE YOU INVOLVED IN AT THE UNIVERSITY?

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A. MAINLY STATISTICAL METHODS, AND BETTER, MORE POWERFUL WAYS TO ANALYZE DATA, ARRIVE AT VALID CONCLUSIONS.

Q. DID YOU ALSO BEGIN DOING WHAT IS KNOWN AS CONSULTING ON STATISTICAL ISSUES WHILE YOU WERE AT THE UNIVERSITY OF CALIFORNIA?

A. ACTUALLY, I HAD DONE SOME CONSULTING FROM THE EARLIEST DAYS THAT I WAS A PROFESSOR. AND I CONTINUED FROM TIME TO TIME TO DO CONSULTING AT THE UNIVERSITY OF

4539

CALIFORNIA, BUT NOT VERY MUCH, BECAUSE MOST OF MY TIME WAS TAKEN UP BY MY JOB AS A PROFESSOR.

Q. AND YOU LEFT THE UNIVERSITY OF CALIFORNIA AROUND 1990; IS THAT CORRECT?

A. 1990, RIGHT.

Q. AND WHAT DID YOU DO NEXT WHEN YOU LEFT THE UNIVERSITY?

A. I STARTED A CONSULTING FIRM.

Q. WHAT'S THE NAME OF YOUR CONSULTING COMPANY?

A. WILLIAM WECKER & ASSOCIATES, INCORPORATED.

Q. THAT'S WHAT YOU ARE STILL DOING TODAY?

A. THAT'S WHAT I DO TODAY. I RUN A CONSULTING FIRM.

Q. WHAT IS THE NATURE OF THE TYPE OF WORK THAT YOUR COMPANY DOES?

A. STATISTICAL AND APPLIED MATHEMATICS WORK.

MY SON ASKED ME THAT ONCE. I SAID, "IT'S SORT OF LIKE DOING OTHER PEOPLE'S HOMEWORK. WHEN THEY HAVE A HARD PROBLEM, A COMPANY OR A GOVERNMENT, THAT'S STATISTICAL IN NATURE, THEY CALL US. WE SOLVE IT."

Q. AFTER YOU LEFT THE UNIVERSITY OF CALIFORNIA IN 1990 AND OPENED YOUR OWN CONSULTING COMPANY, HAVE YOU CONTINUED TO DO SOME TEACHING AT THE UNIVERSITY LEVEL?

A. YES. NOT AS MUCH AS I USED TO WHEN IT WAS MY FULL-TIME JOB, BUT I HAVE CONTINUED TO TEACH AND RESEARCH AT A LOWER LEVEL OF ACTIVITY.

I HAVE BEEN TEACHING AT STANFORD LATELY. I ALSO TAUGHT AT THE UNIVERSITY OF CHICAGO AND I WENT ONCE TO CZECHOSLAVAKIA, TAUGHT AT THE CZECHOSLAVAKIA TECHNOLOGICAL

4540

INSTITUTE AFTER I LEFT UC DAVIS.

Q. DR. WECKER, I'M LOOKING AT YOUR CV. IT APPEARS THAT ALSO YOU'VE PUBLISHED IN PEER-REVIEWED STATISTICAL AND MATHEMETICAL JOURNALS; IS THAT CORRECT?

A. THAT'S CORRECT.

Q. AND YOUR CV INDICATES YOU WERE EDITOR OF THE JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION; IS THAT CORRECT?

A. THAT'S CORRECT.

Q. WHAT IS THE JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION?

A. FIRST, THE AMERICAN STATISTICAL ASSOCIATION IS THE PROFESSIONAL ASSOCIATION OF THE UNITED STATES FOR STATISTICIANS, JUST LIKE THE AMERICAN MEDICAL ASSOCIATION IS THE PROFESSIONAL ASSOCIATION FOR MEDICINE.

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AND OUR ASSOCIATION PUBLISHES A NUMBER OF PROFESSIONAL JOURNALS WHERE THE RESULTS OF RESEARCH GET PUBLISHED.

AND THE FLAGSHIP JOURNAL, THE NO. 1 JOURNAL OF THE PROFESSION IS THE JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION. IT'S REALLY, I THINK, THE NO. 1 JOURNAL IN THE WHOLE WORLD.

Q. YOUR CV INDICATES THAT ARE YOU EDITOR ON THEORY AND METHODS TYPE OF PUBLICATIONS.

WHAT DOES THAT MEAN?

A. WELL, FIRST, TO EXPLAIN THE EDITOR ROLE, THEY OPERATE THE PEER-REVIEW PROCESS FOR THE JOURNAL.

LET'S SAY THAT YOU HAD A BRAND-NEW IDEA IN

4541

STATISTICS AND YOU WROTE IT DOWN IN A MANUSCRIPT AND YOU WANTED TO HAVE IT PUBLISHED FOR THE WHOLE WORLD TO UNDERSTAND.

AND YOU MIGHT -- IF YOU THOUGHT IT WAS REALLY IMPORTANT, YOU MIGHT SEND IT TO THE JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION BECAUSE YOU KNEW, THERE, YOU'D HAVE THE MOST VISIBILITY.

THEN YOUR MANUSCRIPT MIGHT WELL LAND ON MY DESK.

I'D LOOK AT IT, AND IF ON ITS FACE I THOUGHT IT WAS NOT PUBLISHABLE, I'D JUST SEND IT BACK TO YOU WITH A POLITE NOTE.

IF IT LOOKED LIKE A SERIOUS PAPER, THEN I WOULD APPOINT REFEREES, USUALLY THREE OF THEM, THAT WERE EXPERTS, THE WORLD'S BEST EXPERTS I COULD FIND IN THE AREA YOU WERE PUBLISHING.

I WOULD MAIL A COPY OUT TO ALL THOSE PEOPLE, SOMETIMES IN THE UNITED STATES, SOMETIMES IN OTHER COUNTRIES, AND THEY'D CHECK IT OVER CAREFULLY, AND WRITE A REPORT AND SEND IT BACK TO ME AS THE EDITOR.

AND THEN, THESE ARE THE CRITERIA THAT I WOULD APPLY FIRST. IT HAD TO BE RIGHT. BUT THAT WOULDN'T BE ENOUGH. IT ALSO HAD TO BE NEW, BECAUSE IF IT WAS RIGHT BUT SOMEBODY ELSE DID IT ALREADY, THEN IT WOULDN'T GET PUBLISHED. THAT'S NOT ENOUGH EITHER.

IT COULDN'T BE PUBLISHED ONLY IF IT WAS CORRECT AND NEW. IT ALSO HAD TO BE IMPORTANT, A MAJOR CONTRIBUTION TO THE AREA. BECAUSE WE GET MANY, MANY MORE MANUSCRIPTS THAN WE CAN POSSIBLY PUBLISH.

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BUT IF YOU WERE CORRECT AND BRAND-NEW AT YOUR IDEA, AND IT WAS A REALLY IMPORTANT CONTRIBUTION, THEN YOU'D GET PAST THE EDITOR. YOU WOULD FIND YOURSELF A PUBLISHED AUTHOR IN THE JOURNAL OF AMERICAN STATISTICAL ASSOCIATION.

Q. LET ME ASK YOU. IT SOUNDS TO ME LIKE YOU WERE DESCRIBING THE ROLE OF AN EDITOR IN A GENERAL SENSE; IS THAT CORRECT?

WHAT I AM GETTING AT IS, I THINK THAT WHAT I MEANT TO ASK YOU ALSO IS TO EXPLAIN TO US WHAT IS THE NATURE OF THE ARTICLES THAT YOU RECEIVED IN THE THEORIES AND

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METHODS SECTION.
A. WELL, STATISTICAL THEORY AND METHODS --
THE COURT: GO AHEAD. I WAS JUST TRYING TO GET MR. FURR'S EYE.
MR. FURR: YES.
THE COURT: WHEN YOU GET TO A LOGICAL POINT, WE NEED TO TAKE A RECESS.
GO AHEAD AND ANSWER THE QUESTION.
THE WITNESS: THANK YOU, YOUR HONOR.
THE JOURNAL IS DIVIDED INTO TWO AREAS, APPLICATIONS, AND THEORY AND METHODS. AND I WAS THE THEORY AND METHODS SIDE OF THE HOUSE.
AND IT'S -- THAT'S WHERE NEW STATISTICAL METHODS ARE DEVELOPED, MORE POWERFUL FORMULAS, BETTER WAYS OF LOOKING AT THINGS, THE NEW IDEAS.
APPLICATIONS ARE ALSO IMPORTANT, BUT THAT WAS --
ANOTHER EDITOR DID THAT.
MR. FURR: OKAY. THIS IS FINE, YOUR HONOR.

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THE COURT: OKAY, JURORS. PLEASE CONTINUE TO FOLLOWING THE ADMONITION.
LET'S TAKE A 20-MINUTE RECESS UNTIL 20 AFTER 11:00. WE'LL SEE YOU BACK AT 20 AFTER 11:00.
(RECESS TAKEN FROM 11:00 TO 11:30 A.M.)
THE COURT: OKAY. WE ARE BACK ON THE RECORD AND READY TO GO, MR. FURR.
MR. FURR: THANK YOU, YOUR HONOR.
Q. DR. WECKER, LET'S GO BACK TO YOUR CV FOR JUST A MOMENT.
I SEE THAT YOU SERVED ON THE NATIONAL ADVISORY COUNCIL ON ENVIRONMENTAL POLICY AND TECHNOLOGY; IS THAT CORRECT?
A. YES.
Q. WHAT TYPE OF WORK DID YOU DO ON THAT COMMITTEE?
A. I WORKED AS A STATISTICIAN ON THE COMMITTEE.
Q. WHAT WAS THE NATURE OF THE ISSUES THAT YOU WERE WORKING ON?
A. WELL, PERHAPS A LITTLE BACKGROUND ON WHAT THE COMMITTEE IS.
Q. PLEASE.
A. THIS IS A COMMITTEE ESTABLISHED BY ACT OF CONGRESS THAT ADVISES THE UNITED STATES GOVERNMENT ON MATTERS OF ENVIRONMENTAL POLICY.
AND WE LOOKED AT ALL DEPARTMENTS OF GOVERNMENT, INCLUDING THE EPA, NOT JUST THE EPA. WE LOOKED AT THE VARIOUS PROGRAMS, LIKE TRY TO GIVE RECOMMENDATIONS ON HOW THEY WOULD BASICALLY BEST SPEND OUR TAX DOLLARS. IF THEY

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HAD AN EXTRA DOLLAR TO SPEND AND THEY WANTED TO USE IT TO REDUCE POLLUTION, WHERE SHOULD THEY SPEND IT.
THAT'S THE WAY I LOOKED AT THE JOB.
Q. WERE YOU COMPENSATED FOR YOUR WORK ON THE NATIONAL ADVISORY COUNCIL?
A. NO, I DO THAT KIND OF WORK AS A VOLUNTEER.
Q. WE MENTIONED A FEW MOMENTS AGO THAT YOU'VE ALSO DONE SOME PUBLISHING IN PROFESSIONAL JOURNALS, INCLUDING PEER-REVIEWED JOURNALS?

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A. CORRECT.
Q. HAVE THOSE PUBLICATIONS BEEN IN THE FIELD OF APPLICATION STATISTICS AND MATHEMATICS?
A. YES, MATHEMATICS AND STATISTICS.
Q. HOW MUCH OF YOUR TIME DO YOU CURRENTLY SPEND CONDUCTING RESEARCH AND WRITING AND WORKING ON OTHER TYPES OF MATTERS FOR WHICH YOU'RE NOT COMPENSATED BY ANY CLIENT?
A. OH, IF YOU COUNT IN REFEREEING PAPERS AS WELL, IT'S ABOUT A THIRD OF MY TIME.
Q. YOU SPEND MOST OF YOUR TIME NOW WORKING AS A CONSULTANT ON STATISTICAL PROBLEMS; CORRECT?
A. YES.
Q. LET'S TALK A LITTLE BIT ABOUT THE FIRM THAT YOU HAVE FOUNDED AND THE NATURE OF THE TYPE OF CONSULTING THAT YOUR FIRM DOES.
WOULD YOU GIVE THE JURY SOME EXAMPLES OF THE TYPES OF COMPANIES THAT COME TO YOU FOR ADVICE, ANALYSIS, TO ANSWER ON STATISTICAL ISSUES.
A. IT'S JUST EVERY KIND THAT YOU COULD IMAGINE.

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AUTOMOBILE COMPANIES, AIRLINES, BANKS, RAILROADS, COMPUTER COMPANIES, AEROSPACE COMPANIES, GOVERNMENTS.
JUST IF YOU NAME ONE, I IMAGINE WE'VE WORKED WITH THEM BEFORE.
Q. LET ME NAME A COUPLE AND ASK YOU TO EXPLAIN IN A LITTLE MORE DETAIL THE TYPE OF WORK YOU DID.
A. OKAY.
Q. YOU MENTIONED AIRLINES. WHAT TYPE OF STATISTICAL ISSUES DID YOU ASSIST THE AIRLINES IN ADDRESSING?
A. WELL, I HAVE WORKED ON SAFETY -- AIR SAFETY ISSUES.
AND THEN I ALSO WORKED A LOT ON THE COMPUTER RESERVATION SYSTEMS THAT ARE NOW QUITE WELL-KNOWN. WHEN YOU CALL UP FOR YOUR RESERVATION, WANT TO GO SOMEWHERE, THERE IS A BIG COMPUTER STANDING BEHIND THAT, KEEPING TRACK OF EVERYTHING.
I WAS INVOLVED IN THE EARLY STAGES OF DESIGNING ALL THAT.
Q. LET ME NAME ONE MORE. YOU ALSO MENTIONED YOU WORKED FOR FOREIGN GOVERNMENTS.
YOU MENTIONED SPECIFICALLY WORKING FOR THE CZECHOSLOVAKIAN GOVERNMENT; IS THAT CORRECT?
A. YES, BUT THAT MAY TAKE SOME EXPLANATION. I DIDN'T SAY MUCH ABOUT THAT.
Q. WHY DON'T YOU EXPLAIN THE NATURE OF THE WORK THAT YOU DID FOR THE CZECH GOVERNMENT.
A. IT WAS A LITTLE DIFFERENT FROM MY REGULAR WORK, WHAT I MENTIONED. I WAS ACTUALLY JUST INVITED TO TEACH AT

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THE CZECHOSLOVAKIA TECHNOLOGY UNIVERSITY ONE SEMESTER.
AND SO WE PACKED UP THE WHOLE FAMILY, MOVED OVER TO CZECHOSLOVAKIA. IT WAS QUITE EXCITING.
AND WHILE I WAS THERE, THE PERSON WHO LATER BECAME THE PRESIDENT -- HE WAS A FINANCE MINISTER AT THE TIME -- MR. VACLAV KLAUS, K-L-A-U-S, SENT A MESSAGE TO

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COME
TO HIS OFFICE.
THE GIST OF IT WAS HE COULD USE SOME CONSULTING HIMSELF ON THE ISSUES -- HE HAD MAINLY THE ISSUE OF PRIVATIZING THE ECONOMY. AT THAT TIME, THIS WAS RIGHT AFTER
THE BERLIN WALL CAME DOWN. CZECHOSLOVAKIA WAS TOTALLY A COMMUNIST COUNTRY. EVERYTHING WAS OWNED BY THE STATE; HARDLY ANY PRIVATE PROPERTY.
THE PROBLEM WAS HOW TO GET THE PROPERTY IN THE HANDS OF INDIVIDUAL CITIZENS IN A WAY THAT WAS FAIR AND SHARPIES DIDN'T TAKE ADVANTAGE. NOT AN EASY PROBLEM.
I WORKED ON THAT WITH HIM FOR SEVERAL MONTHS, AND
RECRUITED A TEAM, INCLUDING TWO NOBEL PRIZE WINNERS, TO HELP
WITH THE WORK. AND FINALLY, I GAVE I THINK GOOD COUNSEL ON
THAT PROJECT.
Q. BASED ON THE LIST YOU GAVE US A FEW MINUTES AGO,
IT SOUNDS LIKE THE TYPES OF CLIENTS THAT COME TO YOUR FIRM FOR ASSISTANCE ON STATISTICAL ISSUES COVER A WIDE RANGE OF INDUSTRIES AND COMPANIES; IS THAT CORRECT?
A. THAT IS TRUE.
Q. IS THERE SORT OF A UNIFYING PRINCIPLE IN WHAT THESE COMPANIES COME TO YOU FOR?
IN OTHER WORDS, DOES YOUR COMPANY HAVE A
4547
SPECIALTY AREA IN THE FIELD OF STATISTICS THAT YOUR CLIENTS
COME TO YOU FOR ASSISTANCE WITH?
A. WELL, THERE IS A COUPLE OF SPECIALTY AREAS, I THINK THAT WE HAVE.
FIRST, BECAUSE WE'RE A PRODUCT OF THE UNIVERSITY,
WE ARE A FAIRLY HIGH-POWERED GROUP, THEORETICALLY. SO IF YOU HAVE A HARD PROBLEM THAT YOUR OWN RESEARCH GROUP JUST CAN'T CRACK, THEN WE'RE LIKELY THE NUMBER YOU ARE GOING TO CALL.
THERE'S ANOTHER FEATURE THAT I THINK SEEMS TO BE
COMMON, AND THAT IS, IF YOU HAVE A HUGE DATABASE, BECAUSE THEY PRESENT SPECIAL PROBLEMS, AND I SEE IT -- FOR EXAMPLE,
IN THE AIRLINE CASE, WHERE YOU CAN IMAGINE THE VOLUME OF ACTIVITY IN THE RESERVATION SYSTEM. THAT WAS THE REASON THEY NEEDED HELP.
IF THEY WERE JUST ONE RESERVATION A DAY, THEY WOULDN'T NEED MUCH MORE.
ANOTHER EXAMPLE, AND I THINK WILL SATISFACTORILY
ANSWER YOUR QUESTION, WOULD BE THE RAILROADS, WHERE WE WORKED ON THE MERGER OF THE SOUTHERN PACIFIC AND UNION PACIFIC.
AND THEY HAD TO FIGURE OUT HOW ALL THE TRAFFIC WOULD OPERATE AFTER THE RAILS WERE MERGED. MILLIONS OF MILES AND MILLIONS OF TRAFFIC MOVEMENT.
SO A COMMON THREAD HERE THAT I SEE IS MASSIVE DATABASES.
Q. LET ME ASK YOU ONE FOLLOW-UP QUESTION.
YOU ALSO SAID THAT WORKING ON HUGE OR MASSIVE
4548

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DATABASES CAN PRESENT SPECIAL TYPES OF STATISTICAL PROBLEMS.

COULD YOU EXPLAIN WHAT YOU MEAN BY THAT.

A. FOR EXAMPLE, IT REQUIRES SPECIALIZED EQUIPMENT, AND NOT -- EVEN BIG COMPANIES MAY NOT HAVE THE RIGHT EQUIPMENT TO HANDLE THIS SCIENTIFIC COMPUTING EQUIPMENT, THE KIND OF THING YOU FIND AT A UNIVERSITY.

BUT EVEN A BIG AIRLINE MAY NOT HAVE THIS SORT OF EQUIPMENT, SPECIALIZED SOFTWARE AND SO ON. AND I THINK IT REQUIRES EXPERTISE, PEOPLE WHO DO THIS FOR A LIVING, AND HAVE ADVANCED TRAINING IN HOW TO DO IT.

NOT EVERY COMPANY, EVEN LARGE COMPANIES, HAVE THIS KIND OF PEOPLE.

Q. WHAT TYPES OF SPECIAL SCIENTIFIC COMPUTING EQUIPMENT DOES YOUR FIRM USE TO ADDRESS THESE TYPES OF MASSIVE DATABASES?

A. WE HAVE LOTS OF DIFFERENT EQUIPMENT, BUT THE MAIN ONE FOR THE BIG DATABASES IS IBM, CALLED A RISC SYSTEM 6000, R-I-S-C. RISC IS A SCIENTIFIC COMPUTER.

YOU MAY RECALL A COUPLE OF YEARS AGO WHEN THERE WAS A CHESS CONTEST BETWEEN A COMPUTER AND GARRY KASPAROV AND THE IBM COMPUTER. THAT WAS THE KIND OF COMPUTER. IT'S THE SAME MODEL.

Q. THE COMPUTER WON?

A. NO. RISC SYSTEM 6000. THEY CALLED IT "BIG BLUE" OR SOMETHING LIKE THAT.

Q. YOU HAVE TESTIFIED IN THE PAST IN COURTROOMS AS AN EXPERT IN STATISTICS, HAVEN'T YOU, DR. WECKER?

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A. YES, I HAVE.

Q. CAN YOU GIVE US AN ESTIMATION OF HOW MANY TIMES YOU'VE TESTIFIED IN THE PAST.

A. OH, IN MAYBE OVER 20 YEARS, PROBABLY 20 TIMES.

Q. HAVE YOU ALSO TESTIFIED IN THE PAST AS A COURT-APPOINTED EXPERT IN STATISTICS?

A. YES, I HAVE BEEN A COURT-APPOINTED EXPERT.

Q. AND COULD YOU DESCRIBE THE TYPE OF WORK YOU DID AS A COURT-APPOINTED EXPERT IN STATISTICS.

A. YES. THAT'S A LITTLE UNUSUAL IN MY EXPERIENCE AS A COURT-APPOINTED EXPERT.

THIS WAS IN CALIFORNIA, A MATTER BETWEEN THE BANK OF AMERICA AND THE STATE OF CALIFORNIA, HAVING TO DO WITH THE INDIVIDUAL BANK ACCOUNTS AT THE BANK OF AMERICA ALL OVER THE STATE, ALL THE WAY BACK INTO THE '40S. A HUGE DATABASE AGAIN, MESSY DATABASE.

AND THE ISSUE IS, IF SOMEONE DIES OR OTHERWISE FORGETS ABOUT THEIR ACCOUNT, IT'S DORMANT, I'M NOT AN EXPERT IN THE LAW HERE, BUT THERE'S SOME LAW THAT SAYS THAT MONEY GETS TO BE GIVEN OVER, CARETAKER STATUS, TO THE STATE OF CALIFORNIA.

SO THERE WAS AN ISSUE OF WHETHER THAT HAS BEEN DONE RIGHT. THE BANK HAD EXPERTS AND THE STATE HAD

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EXPERTS
24 AND IT WAS COMPLICATED.
25 AND FINALLY, THE COURT DECIDED THAT THEY MIGHT
26 WANT THEIR OWN EXPERT TO HELP UNDERSTAND DIFFERENT
27 POSITIONS, AND THE THREE PARTIES SETTLED ON ME, THE BANK
AND
28 THE STATE AND THE JUDGE.
4550
1 Q. DR. WECKER, YOU'RE FAMILIAR WITH A DATABASE
KNOWN
2 AS THE AMERICAN CANCER SOCIETY'S CPS-II, CANCER PREVENTION
3 SURVEY II, I BELIEVE IT IS?
4 A. YES, I AM.
5 Q. (WRITING ON BOARD) IS THAT TYPICALLY
ABBREVIATED
6 AS CPS-II?
7 A. EITHER ONE. USUALLY NOT TOGETHER, WITH A
8 HYPHEN. IT'S USUALLY CPS-II OR ACS.
9 Q. HAVE YOU TESTIFIED IN THE PAST IN COURTROOMS ON
10 YOUR ANALYSES OF THE ACS CPS-II DATABASE?
11 A. YES, I HAVE ANALYZED THAT DATA BEFORE, AND I'VE
12 PRESENTED THE RESULTS OF MY ANALYSIS IN A COURTROOM
BEFORE.
13 Q. AND SPECIFICALLY, HAVE YOU TESTIFIED IN THE
PAST
14 ON SMOKING-ATTRIBUTABLE DEATH ESTIMATIONS BASED UPON THE
ACS
15 CPS-II DATABASE?
16 A. YES, I'VE DONE THAT.
17 Q. AND THAT TYPE OF TESTIMONY WAS GIVEN IN OTHER
18 TOBACCO-RELATED LITIGATION, WASN'T IT, SIR?
19 A. THAT'S RIGHT.
20 Q. OKAY. AND YOU WERE CALLED IN THOSE OTHER CASES
21 BY THE R.J. REYNOLDS TOBACCO COMPANY, JUST LIKE YOU ARE
22 BEING CALLED TODAY; CORRECT?
23 A. THAT'S RIGHT.
24 Q. AND YOU WERE COMPENSATED FOR THE ANALYSES THAT
25 YOU PERFORMED AND YOUR TIME IN PERFORMING THOSE ANALYSES
BY
26 R.J. REYNOLDS FOR YOUR WORK ON THE CPS-II DATABASE,
WEREN'T
27 YOU?
28 A. THAT'S RIGHT.
4551
1 Q. YOU ARE BEING COMPENSATED FOR THE TIME THAT YOU
2 SPENT PREPARING TO TESTIFY TODAY, AREN'T YOU, SIR?
3 A. THAT'S RIGHT.
4 Q. YOU BILL BY THE HOUR?
5 A. YES.
6 Q. WOULD YOU TELL THE JURY WHAT YOUR HOURLY RATE
7 IS.
8 A. MINE IS 395 AN HOUR FOR THIS WORK.
9 Q. OKAY. TELL THE JURY WHAT YOU DID TO PREPARE TO
10 TESTIFY TODAY.
11 A. WELL, I REVIEWED THE DATA THAT WE HAVE JUST
12 DISCUSSED, THE BIG AMERICAN CANCER SOCIETY DATABASE.
13 AND I REVIEWED THE LITERATURE ON THE
CALCULATIONS
14 OF WHAT IS CALLED ATTRIBUTABLE MORTALITY. AND I REVIEWED
15 THE LITERATURE ON VARIOUS RISK FACTOR INFORMATION FOR
16 MORTALITY, INCLUDING TOBACCO, ALSO INCLUDING NUMEROUS
17 OTHERS, LIKE LACK OF EXERCISE OR DIETS.
18 BY "DIET," I DON'T MEAN LOSING WEIGHT. I MEAN

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WHAT YOU EAT, LIKE FRIED FOODS OR HIGH-FAT FOODS. THOSE ARE RISK FACTORS. AND OTHER RISK FACTORS. I REVIEWED THAT LITERATURE.

Q. LET ME BE CLEAR HERE. YOU CONDUCTED YOUR OWN ANALYSES ON THE CPS-II DATABASE; IS THAT CORRECT?

A. THAT'S RIGHT. WITH MY OWN COMPUTER AND MY OWN ANALYSIS.

Q. AND YOU ALSO REVIEWED THE STATISTICAL EPIDEMIOLOGIC LITERATURE TO IDENTIFY CERTAIN RISK FACTORS THAT HAVE BEEN REPORTED TO BE LINKED WITH AN INCREASED RISK

4552

OF MORTALITY OR DEATH; IS THAT CORRECT, SIR?

A. LINKED IN VERY A CAREFUL SENSE. STATISTICAL ASSOCIATION, MEANING WHEN YOU FIND A HIGHER AMOUNT OF ONE THING, LIKE FRIED FOODS, YOU TEND TO FIND A HIGHER MORTALITY IN THAT GROUP THAT'S DOING THE EATING OF FRIED FOODS.

Q. LET ME ASK YOU, AS A PRELIMINARY MATTER, DR. WECKER: CAN STATISTICS ALONE BE USED TO PROVE THAT AN EXPOSURE ACTUALLY CAUSED A DISEASE?

A. IT CAN'T PROVE CAUSE AND EFFECT WITH THE KIND OF DATA THAT WE ARE TALKING ABOUT HERE.

WE'RE VERY CAREFUL AS STATISTICIANS TO SAY THAT IT SHOWS STATISTICAL ASSOCIATION THAT'S HELPFUL. IT'S NOT LIKE IT'S NOT HELPFUL. IT CAN'T PROVE CAUSE AND EFFECT.

IT JUST MEANS THAT THERE'S MORE FRIED FOODS BEING EATEN BY A GROUP. AND IF THERE IS HIGHER MORTALITY, WE REPORT THAT WAS A RISK FACTOR FOR MORTALITY.

Q. LET ME ASK YOU TO DEFINE A TERM FOR US.

ARE YOU FAMILIAR WITH AN EPIDEMIOLOGIC AND STATISTICAL TERM KNOWN AS "CONFOUNDING"?

A. YES.

Q. (WRITING ON BOARD)

A. EPIDEMIOLOGIC AND STATISTICAL.

Q. WOULD YOU EXPLAIN TO US WHAT "CONFOUNDING" IS IN EPIDEMIOLOGIC OR STATISTICAL STUDIES.

MR. BROWN: OBJECTION. CALLS FOR AN OPINION ON AN AREA ON WHICH HE'S NOT QUALIFIED AND NO FOUNDATION.

THE COURT: OVERRULED.

THE WITNESS: "CONFOUNDING" IS A VERY

4553

FUNDAMENTAL STATISTICAL CONCEPT. LET ME EXPLAIN BY WAY OF EXAMPLE RATHER THAN ABSTRACTLY.

IN THE EXAMPLE I WAS GIVING OF A GROUP THAT MIGHT EAT A LOT OF FRIED FOODS AND HAVE AN ELEVATED HEALTH PROBLEM IN CERTAIN AREAS OR ELEVATED MORTALITY DEATH RATE, WE CAN REPORT THAT AS AN ASSOCIATION.

BUT WE WOULD RECOGNIZE THAT ALONG WITH THAT COMES WHAT WE CALL A CONFOUNDING PROBLEM, BECAUSE THERE ARE OTHER VARIABLES THAT HAVEN'T BEEN MENTIONED HERE SO FAR.

I SAID "FRIED FOODS" AND I SAID "DEATH RATE." BUT WHAT IF IT TURNS OUT TO BE THE CASE THAT PEOPLE THAT EAT

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FRIED FOODS ALSO DON'T GET EXERCISE, OR DON'T HAVE OTHER KINDS OF -- OR HAVE OTHER KINDS OF RISK FACTORS, LIKE LACK OF SOCIAL SUPPORT IS ONE, AND MAYBE TOXIC EXPOSURES. MAYBE THEY WORK IN A FACTORY.

AND SO WHEN YOU JUST LOOK AT ONE FACTOR, LIKE EATING FRIED FOODS, AND YOU NOTICE AN ELEVATED MORTALITY RATE, WITH FURTHER STUDY YOU REALIZE THAT THERE IS A CONFOUNDING PROBLEM GOING ON HERE.

IT COULD BE WRONG TO JUST SAY THAT THE FRIED FOODS IS ALL THAT THERE IS TO UNDERSTAND HERE, BECAUSE PROBABLY THE ELEVATED MORTALITY IS CONFOUNDED BY OTHER FACTORS THAT ARE LYING THERE YET TO BE LOOKED AT.

Q. IS CONFOUNDING AN IMPORTANT STATISTICAL PRINCIPLE WITH RESPECT TO THE ANALYSES THAT YOU'RE PREPARED TO PRESENT HERE TODAY?

A. YES.

Q. I ASKED YOU TO ASSUME THAT DR. DAVIS TESTIFIED

4554

THAT SMOKING CAUSED 420,000 DEATHS PER YEAR IN THE UNITED STATES.

DO YOU RECALL THAT?

A. YES.

MR. FURR: COULD I HAVE THE LIGHTS, PLEASE.

MR. BROWN: I'M GOING TO OBJECT, I THINK, TO THE NEXT QUESTION, BUT I'M NOT SURE. I'M JUST WAITING.

MR. FURR: OKAY. WELL, I'LL TRY TO AVOID THE OBJECTION, BUT I DON'T KNOW WHAT IT IS.

Q. COULD YOU STEP DOWN, DR. WECKER.

LET ME ASK YOU TO TAKE A LOOK AT WHAT WAS MARKED PREVIOUSLY AS PLAINTIFFS' EXHIBIT 1804, WHICH I WILL PROJECT ON THE SCREEN.

MR. BROWN: COULD I SEE IT FOR ONE SECOND.

MR. FURR: Q. DR. WECKER, LET ME ASK YOU TO ASSUME THAT THIS PLAINTIFFS' EXHIBIT 1804 IS THE EXHIBIT THAT DR. DAVIS REFERENCED WHEN HE TESTIFIED WITH RESPECT TO HIS OPINION THAT 420,000 --

A. I SEE IT.

Q. IT'S NOT YOU I'M HELPING RIGHT NOW -- THAT 420,000 DEATHS WERE CAUSED IN THE UNITED STATES ON AN ANNUAL BASIS BY SMOKING. OKAY?

A. I UNDERSTAND.

Q. YOU SEE THESE LETTERS HERE IN THE BOTTOM CORNER OF THIS EXHIBIT, "CDC"?

A. YES.

Q. DO YOU KNOW WHAT THE CDC IS?

A. YES.

4555

Q. WHAT IS "CDC"?

A. CENTER FOR DISEASE CONTROL. IT'S A GOVERNMENT ORGANIZATION.

Q. DO YOU KNOW WHETHER THE CDC HAS PUBLISHED AN ANALYSIS OF DEATHS ATTRIBUTABLE TO SMOKING IN WHICH THIS 420,000 FIGURE WAS PRESENTED?

A. YES, I KNOW THAT'S TRUE.

Q. ARE YOU FAMILIAR WITH THAT ANALYSIS?

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A. YES, I HAVE IT HERE, IF YOU WANT.
Q. YOU HAVE REVIEWED IT, OBVIOUSLY?
A. YES.
Q. COULD I HAVE THE LIGHTS, PLEASE.
LET ME ASK YOU, DR. WECKER, DO YOU KNOW THE DATABASE OR THE SOURCE OF THE INFORMATION THAT THE CDC USED TO CALCULATE THAT 420,000 ANNUAL DEATHS ESTIMATION?
A. YES, I KNOW THE SOURCE OF THE INFORMATION.
Q. AND WHAT WAS THE DATABASE USED BY THE CDC?
A. THE PRINCIPAL DATA MENTIONED EARLIER, THE AMERICAN CANCER SOCIETY DATABASE KNOWN AS CPS-II.
Q. BEFORE WE GO ON, THE JURY HAS HEARD SOMETHING ABOUT CPS-II, BUT LET ME ASK YOU TO REVIEW FOR US THE NATURE OF THE STUDY THAT WAS CONDUCTED BY THE AMERICAN CANCER SOCIETY THAT WE REFER TO AS CPS-II.
A. OKAY. IT WAS A VERY LARGE STUDY, INVOLVING MORE THAN A MILLION PEOPLE. IT WAS NOT A RANDOM SAMPLE FROM THE UNITED STATES. IT HAS A DEFECT, BUT I'M NOT GOING TO BE TALKING ABOUT THAT DEFECT TODAY, I DON'T BELIEVE.
IT WAS JUST VOLUNTEERS FROM, I BELIEVE, THE

4556

BOSTON AREA, SOMEWHERE ON THE EAST COAST.
AND THESE MILLION PEOPLE, MEN AND WOMEN, WERE ASKED TO FILL OUT A QUESTIONNAIRE DESCRIBING ALL KINDS OF THINGS THAT THE AMERICAN CANCER SOCIETY THOUGHT WAS IMPORTANT TO KNOW, LIKE DIET AND EXERCISE. THERE WERE SMOKING QUESTIONS AND SEVERAL OTHERS.
AND THEN, FOUR YEARS LATER, THE AMERICAN CANCER SOCIETY DID A FOLLOW-UP SURVEY, AND THE IMPORTANT RESULT IN FOUR-YEAR FOLLOW-UP WAS WHO DIED.
AND THEN THEY WOULD RECORD ALL OF THAT. THEY HAVE THE QUESTIONNAIRES, AND THEN THEY HAVE THE FOLLOW-UP DEATH RESULTS.
AND THEN THE JOB OF THE STATISTICIAN IS TO SEE WHAT RELATIONSHIPS THERE MIGHT BE.
Q. AND HAVE YOU PREPARED SOME EXHIBITS THAT WOULD ASSIST YOU IN EXPLAINING TO THE JURY THE NATURE OF THE INFORMATION THAT THE AMERICAN CANCER SOCIETY ACQUIRED FROM THE 1 MILLION PARTICIPANTS IN THIS STUDY?
A. YES, I HAVE.
MR. FURR: YOUR HONOR, I'M GOING TO MARK AS 6274, 6275, 6276 AND 6277 FOUR CHARTS THAT ARE BLOWUPS OF THE QUESTIONNAIRE USED BY THE AMERICAN CANCER SOCIETY.
(DOCUMENTS MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION DEFENDANTS' EXHIBITS # 6274, 6275, 6276 AND 6277)
MR. BROWN: YOUR HONOR, I'M GOING TO OBJECT TO SHOWING THIS TO THE JURY. THEY'RE HEARSAY.

4557

THE COURT: OKAY. DON'T SHOW IT TO THE JURY YET. TURN IT AROUND.
THIS DOESN'T HAVE ANY INFORMATION ON IT. THIS IS MERELY THE FORM.
MR. BROWN: THE INFORMATION IS THE FORM. THE INFORMATION IS THE QUESTION.

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I'LL ALSO OBJECT ON 352. THIS IS HEARSAY. IT'S 352 AS WELL.

I THINK MAYBE WE OUGHT TO HAVE A CONFERENCE IN THE HALL, BECAUSE IT'S STARTING TO GET MORE COMPLICATED.

THE COURT: OKAY.

(COURT AND COUNSEL CONFER OUTSIDE THE PRESENCE OF THE JURY)

THE COURT: I UNDERSTAND ON THAT CHART THAT YOU DON'T HAVE --

MR. BROWN: I WILL WITHDRAW MY OBJECTION. COULD WE REMOVE THE OBSTRUCTION BETWEEN YOUR HONOR AND MYSELF.

THE COURT: YES. YOU WANT TO SEE ME?

MR. BROWN: I DO. I MISSED YOU FOR A FEW MINUTES WHILE IT WAS UP THERE.

THE COURT: LET ME ASK YOU: IS THERE SOMETHING WE CAN DO PRODUCTIVELY IN THE NEXT TWO OR THREE MINUTES? IT'S CLOSE TO NOON.

MR. FURR: I BELIEVE THE RESPONSE TO THE NEXT QUESTION WILL TAKE MORE THAN TWO OR THREE MINUTES.

THE COURT: WE BETTER BREAK FOR LUNCH. I DO WANT TO GET IN A GOOD, LONG AFTERNOON THIS AFTERNOON WITH THE JURY, PLEASE.

LET'S TAKE A RECESS, JURORS, UNTIL 1:30. PLEASE CONTINUE TO FOLLOW THE ADMONITION. WE'LL SEE YOU BACK AT 1:30.

(LUNCH RECESS TAKEN AT 11:58 A.M.)

AFTERNOON SESSION 1:35 P.M.

MONDAY, FEBRUARY 28, 2000

THE COURT: GOOD AFTERNOON, EVERYBODY.

WE ARE BACK ON THE RECORD AND READY TO GO, MR. FURR.

MR. FURR: THANK YOU, YOUR HONOR.

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DIRECT EXAMINATION (CONTINUED)

BY MR. FURR: Q. DR. WECKER, BEFORE WE BROKE FOR LUNCH, WE HAD BEGUN TALKING ABOUT THE MANNER IN WHICH THE CPS-II STUDIES WAS CONDUCTED.

DO YOU RECALL THAT, SIR?

A. YES.

Q. AND I BELIEVE THAT YOU HAD ALREADY EXPLAINED TO THE JURY THAT THE INFORMATION GATHERED FROM THE STUDY SUBJECTS WAS GATHERED USING A QUESTIONNAIRE; IS THAT CORRECT?

A. THAT'S RIGHT.

Q. AND WE HAD JUST GOT DONE MARKING THE FOUR-PAGE --

I SHOULD SAY THE BLOWUP OF THE FOUR PAGES OF THE CPS-II QUESTIONNAIRE; CORRECT?

A. YES.

Q. COULD YOU STEP DOWN AND USE THESE EXHIBITS TO EXPLAIN TO THE JURY THE TYPE OF INFORMATION THAT WAS GATHERED IN THE CPS STUDY.

A. YES.

MR. FURR: EXCUSE ME, DR. WECKER.

WITH THE COURT'S PERMISSION, MR. BROWN ASKED THAT

4560

WE HOLD UP FOR A MINUTE, YOUR HONOR.

THE COURT: LET ME ASK, WAS THE FIRST NUMBER 6274? IS THAT THE FIRST ONE?

MR. FURR: CORRECT, YOUR HONOR.

Q. OKAY. DR. WECKER, COULD YOU EXPLAIN TO US THE TYPES AND CATEGORIES OF INFORMATION THAT WERE OBTAINED ON THE CPS-II STUDY.

A. YES. THIS IS THE FIRST PAGE OF THE QUESTIONNAIRE FOR WOMEN. THERE IS ANOTHER QUESTIONNAIRE FOR MEN.

IT'S MOSTLY THE SAME, BUT THERE'S SOME SPECIFIC QUESTIONS FOR WOMEN ON THIS ONE, SO I'LL USE THIS ONE AS AN EXAMPLE.

WE ARE -- THERE WERE ABOUT A HALF A MILLION MEN AND HALF A MILLION WOMEN FOR THE STUDY. YOU CAN SEE IT'S THE AMERICAN CANCER SOCIETY'S CANCER PREVENTION STUDY NO. 2. THEY HAVE THE SHORT TERM CPS-II.

ON THIS FIRST PAGE -- I'M NOT GOING TO GO THROUGH ALL THE DETAILS, BUT JUST TO GIVE THE GENERAL IDEA, YOU SEE THAT THEY START WITH FAMILY HISTORY KIND OF QUESTIONS, BECAUSE THOSE ARE ISSUES THAT THE AMERICAN CANCER SOCIETY SEES FIT TO STUDY WHEN THEY'RE STUDYING CANCER.

MR. BROWN: YOUR HONOR, I MOVE TO STRIKE THAT, THE OPINION OF WHAT THE AMERICAN CANCER SOCIETY SEES FIT TO STUDY.

THE COURT: YES, I AM GOING STRIKE THAT REFERENCE, WHAT THE AMERICAN SOCIETY SEE FITS TO DO.

JUST AS A HOUSEKEEPING MATTER, WHILE WE ARE ON THIS, YOU MADE AN OBJECTION BEFORE WE HAD A RECESS ON

4561

HEARSAY. AND I'M NOT SURE WHETHER I SHOULD RULE ON THAT.

MR. BROWN: NO. I WITHDREW IT, YOUR HONOR.

THE COURT: YOU WITHDREW IT.

GO AHEAD.

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THE WITNESS: LET ME REPHRASE THAT.
THOSE ARE ITEMS THAT ARE ON THE AMERICAN CANCER SOCIETY QUESTIONNAIRE.
THEN THERE'S ANOTHER SECTION HERE AT THE BOTTOM HAVING TO DO WITH HISTORY OF DISEASES.
AND I WILL JUST MOVE ON TO THE SECOND PAGE, WHICH IS THIS ONE (INDICATING).
MR. FURR: Q. DR. WECKER, COULD YOU TELL US THE NUMBER OF EACH EXHIBIT AS YOU GO THROUGH THEM, PLEASE.
A. THIS IS THE SECOND PAGE OF THE QUESTIONNAIRE, NO. 6275.
THIS IS THE SECTION AT THE TOP OF 6275, THE SECOND PAGE OF QUESTIONNAIRE ABOUT EXERCISE.
AND THEY WANT -- THEY INQUIRE IN THE QUESTIONNAIRE WHETHER YOU GET NO EXERCISE AT ALL OR SLIGHT OR MODERATE OR HEAVY. THAT'S AN EASY QUESTION. JUST CHECK THE BOX. AND THEN OTHER QUESTIONS ABOUT YOUR CURRENT PHYSICAL CONDITION.
NEXT ARE QUESTIONS, SPECIAL QUESTIONS FOR THE FEMALES, BECAUSE THIS IS A FEMALE QUESTIONNAIRE. AND OVER IN THE BOTTOM ON THE RIGHT, THIS IS THE SMOKING QUESTIONS, UNDER "HABITS." YOU CAN SEE THEY'RE ASKING ABOUT SMOKING HISTORY, AGE BEGAN AND SO ON.
Q. THIS IS THE NEXT ONE?

4562

A. THE THIRD PAGE IS EXHIBIT 6276. AND THEY FINISH UP THE SMOKING QUESTIONS. THEY GET INTO DIET QUESTIONS.
AND THEY ARE QUESTIONS, VERY DETAILED QUESTIONS ON DIET, BRUSSELS SPROUTS AND LEAFY GREEN VEGETABLES AND VERY DETAILED QUESTIONS. A SPECIAL SECTION ON FRIED FOODS, AND SO ON WITH THE DIET QUESTIONS.
AND THEN VITAMINS AND MEDICATIONS THEY ASK ABOUT OVER HERE.
AND THEN FINALLY, THE LAST PAGE, WHICH IS 6277, THEY GET INTO OCCUPATIONAL EXPOSURES, LIKE TOXIC, GASOLINE EXHAUST AND WOOD DUST, THAT SORT OF THING.
AND THEN THE LAST SECTION HERE IS KIND OF -- THEY CALL IT "MISCELLANEOUS," BUT IT'S GOT SEVERAL DIFFERENT THINGS IN HERE.
BUT THE MAIN THING IN HERE IS WHAT'S CALLED SOCIAL SUPPORT QUESTIONS, LIKE: "HOW MANY FRIENDS OR RELATIVES DO YOU FEEL CLOSE TO? ARE YOU MARRIED? DO YOU GO TO CHURCH OR TEMPLE AND ATTEND CLUB MEETINGS?"
THIS IS A COLLECTION OF THINGS THAT ARE TERMED IN THE LITERATURE AS SOCIAL SUPPORT QUESTIONS. AND IT'S A RECOGNIZED RISK FACTOR, IF PEOPLE HAVE LOTS OF SOCIAL SUPPORT, THEY HAVE BETTER HEALTH AND MORTALITY.
THAT'S THE END. SO THERE'S NEARLY 400 ITEMS OF INFORMATION THAT ARE THEN PUT INTO A COMPUTER.
AND THAT'S THE DATABASE THAT I'M REFERRING TO WHEN I TALKED ABOUT THE CPS-II DATABASE.
Q. WHY DON'T YOU TAKE THE STAND AT LEAST FOR A FEW MINUTES.

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LET'S SEE IF I UNDERSTAND, DR. WECKER. I BELIEVE YOU JUST TOLD US THAT MORE THAN 400 ITEMS OR PIECES OF INFORMATION WAS OBTAINED FOR EACH INDIVIDUAL THAT FILLED OUT THE QUESTIONNAIRE; IS THAT CORRECT?

A. YES, I THINK THAT'S -- I HOPE I HAVE GOT RECALL ON THAT. IT'S ABOUT 400 TOTAL ITEMS OF INFORMATION, AND YOU JUST SAW THEM. THOSE WERE ON THE ITEMS THAT WE JUST PUT ON THE QUESTIONNAIRE.

Q. YOU TOLD US EARLIER THAT THIS WAS A QUESTIONNAIRE ADMINISTERED TO AROUND A MILLION PEOPLE; IS THAT CORRECT?

A. MORE THAN A MILLION.

Q. SO YOU HAVE ABOUT 400 MILLION PIECES OF INFORMATION COMING OUT OF THE STUDY; IS THAT CORRECT?

A. YES. WHEN YOU GET IT ON THE COMPUTER RECORDS, IT'S OVER 400 MILLION ITEMS OF INFORMATION.

Q. AND DOES YOUR CONSULTING COMPANY POSSESS THE DATA TAPES THAT CONTAIN ALL OF THE RESPONSES PROVIDED BY THE 1 MILLION STUDY SUBJECTS IN THE CPS-II?

A. YES, WE HAVE THOSE DATA TAPES.

Q. WHEN DID YOU OBTAIN THOSE DATA TAPES?

A. ABOUT 10 YEARS AGO.

Q. NOW, YOU TOLD US EARLIER THAT YOU HAVE CONDUCTED ANALYSES USING THOSE DATA TAPES; IS THAT CORRECT?

A. YES.

Q. BY THE WAY, YOU WERE DEPOSED IN THIS CASE; IS THAT CORRECT?

A. THAT'S CORRECT.

Q. YOU WERE DEPOSED BY A LAWYER NAMED MR. WILNER; IS

THAT RIGHT?

A. YES.

Q. AND IS IT ALSO TRUE THAT YOU HAVE PREVIOUSLY PROVIDED COPIES OF THOSE DATA TAPES TO MR. WILNER AT HIS REQUEST SO THAT HE WOULD HAVE ACCESS TO THE DATA ALSO?

A. THAT'S CORRECT. THE DATA TAPES AND THE DOCUMENTATION THAT COMES WITH THEM FROM THE AMERICAN CANCER SOCIETY.

Q. WHAT DO YOU MEAN BY THE "DOCUMENTATION THAT COMES WITH THE DATA"?

A. WELL, THERE IS A GREAT THICK BOOK. FOR THOSE FAMILIAR WITH COMPUTER DATABASES, IT HAS RECORD LAYOUTS, VARIABLE NAMES, THE THINGS YOU NEED IN ORDER TO MAKE GOOD USE OF THE COMPUTER DATABASE.

Q. IS THIS BOOK SORT OF A ROADMAP TO THE INFORMATION CONTAINED ON THE DATA TAPES?

A. YES. IT'S LIKE A ROADMAP.

Q. LET ME BACK UP. YOU TOLD US YOU GOT THE DATA ABOUT 10 YEARS AGO. WHAT DID YOU DO FIRST WITH THE DATA TAPE WHEN YOU RECEIVED IT 10 YEARS AGO?

A. WELL, THE FIRST THING I DID IS THE THING I ALWAYS DO FIRST WHEN I GET A DATABASE. I CHECK IT FOR ACCURACY,

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AND ANYTHING THAT MIGHT BE UNUSUAL, THAT NEEDS TO BE LOOKED INTO. THERE ARE QUESTIONS IN HERE ABOUT YOUR HEIGHT AND WEIGHT. AND SO I QUICKLY GO THROUGH AND FIND IF THERE'S ANYBODY 20 FEET TALL, 700 POUNDS, SOMETHING THAT DOESN'T MAKE SENSE.

AND THAT'S EASY TO HAPPEN IN A DATABASE, BECAUSE

4565

SOMEBODY HAD TO KEYPUNCH IN THE INFORMATION AND MAYBE THEY MADE A MISTAKE. SO I CHECK ALL THE VARIABLES FOR REASONABLENESS.

AND I ALSO CHECK FOR DUPLICATES. THAT'S, AGAIN, SOMETHING COMMON. WE HAVE ALL RECEIVED TWO CATALOGS FROM THE SAME COMPANY. WE ARE IN THE DATABASE TWICE. SO I CHECK FOR DUPLICATES.

AT THE END OF THAT, I BASICALLY DISCOVERED THIS WAS A GOOD QUALITY DATABASE WITH ESSENTIALLY NO PROBLEMS.

Q. DID YOU ALSO USE THE DATA TO DETERMINE WHETHER OR NOT YOU COULD REPLICATE THE RESULTS OF STUDIES THAT HAD BEEN PUBLISHED ON THAT DATA SET?

A. YES. THAT WAS THE NEXT THING TO VERIFY, THAT IT REPLICATED THE DATA I THOUGHT I HAD.

I WENT TO PUBLISHED ARTICLES THAT HAD USED THE SAME DATA, MAINLY THE GOVERNMENT ARTICLES. AND THEN I APPLIED THE SAME PROCEDURES AND MADE SURE I CAME OUT WITH THE SAME ANSWER.

AND SURE ENOUGH, IT REPLICATES THE RESULTS OF OTHERS, AND THAT GAVE ME CONFIDENCE THAT I HAVEN'T MADE A MISTAKE HERE. I REALLY HAVE WHAT I THINK I HAVE, WHICH IS THE AMERICAN CANCER SOCIETY DATA.

Q. YOU MENTIONED A MOMENT AGO ABOUT RECEIVING TWO CATALOGS, HOW SOMETIMES THINGS ARE DUPLICATED.

DID YOU DETERMINE WHETHER OR NOT THERE WAS ANY DUPLICATION WITHIN THE CPS-II DATA SET?

A. I FOUND ONE DUPLICATE. I INFORMED THE AMERICAN CANCER SOCIETY ABOUT THAT AND THEY TOOK IT OUT.

4566

Q. OF THE MILLION PEOPLE THAT COMPLETED THE QUESTIONNAIRE, AS YOU INDICATED, WHO ANSWERED APPROXIMATELY 400 QUESTIONS, DID ANY TWO OF THOSE MILLION PEOPLE COMPLETE THE QUESTIONNAIRE IN EXACTLY THE SAME WAY?

A. NO. THAT WAS INTERESTING. EVEN LEAVING ASIDE THE OBVIOUS THINGS, LIKE SOCIAL SECURITY NUMBER, THINGS THAT WOULD BE UNIQUE, BUT JUST LOOKING AT THE SUBSTANTIVE QUESTIONS LIKE DIET AND EXERCISE, THERE WERE NO -- NO TWO PEOPLE OUT THE MILLION THAT HAD IDENTICAL BACKGROUNDS AND HABITS IN TERMS OF FAMILY HISTORY OR DIET OR EXERCISE. EVERYONE HAD THEIR OWN INDIVIDUAL CHOICES.

Q. EARLIER, I PUT UP PLAINTIFFS' EXHIBIT 1804, AND WE LOOKED AT THE CHART THAT DR. DAVIS HAD USED THAT HAD THE CDC SMOKING ATTRIBUTABLE MORTALITY ESTIMATE OF 420,000 PEOPLE ON IT.

DO YOU RECALL THAT?

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A. YES, I DO.
Q. ARE YOU FAMILIAR WITH THE STATISTICAL METHODOLOGY THAT IS USED TO MAKE THAT CALCULATION?
A. YES.
Q. HAVE YOU PREPARED A CHART THAT WOULD HELP YOU EXPLAIN HOW THAT CALCULATION IS MADE TO THE JURY?
A. YES, I HAVE.
MR. FURR: WOULD YOU STEP DOWN AGAIN, PLEASE.
LET ME ASK YOU TO USE CHART THAT WE MARKED AS 6278, ENTITLED "ILLUSTRATION OF 'ATTRIBUTABLE' DEATHS CALCULATION" TO EXPLAIN HOW THAT CALCULATION IS MADE.
(DOCUMENT MORE PARTICULARLY
4567
LISTED IN THE INDEX MARKED
FOR IDENTIFICATION DEFENDANTS'
EXHIBIT # 6278)
THE WITNESS: OKAY. IT'S VERY EASY TO EXPLAIN, BUT COMPLICATED TO DO IN PRACTICE, BECAUSE THERE IS A MILLION THINGS TO DO.
SO I MADE A SIMPLE EXAMPLE WITH ONLY 100 NONSMOKERS AND 100 CURRENT SMOKERS. AND I'M GOING TO ILLUSTRATE THE CALCULATION ON THIS SMALL ILLUSTRATION. THIS IS NOT REAL DATA. THIS IS JUST TO SHOW HOW IT WORKS.
SO WE HAVE GOT 200 PEOPLE, AND WE HAVE GOT THEM INTO TWO GROUPS, THE SMOKERS AND THE NONSMOKERS.
AND THEN WE WATCH FOR FOUR YEARS AND WE COME BACK AND FOLLOW UP AND WE FIND OUT WHO DIED.
AND SUPPOSE THE RED DOTS THAT I HAVE COLORED IN HERE ARE THE DEATHS. SO IN THE NEVER-SMOKER GROUP, 1, 2 3, 4 DEATHS.
AND IN THEN IN THE GROUP OF SMOKERS, THERE WERE MORE DEATHS, 1, 2, 3, 4, 5, 6, 7, 8. SO THERE WERE MORE DEATHS AMONG THE SMOKERS.
AND THE ATTRIBUTABLE DEATHS CALCULATION IS NOTHING MORE THAN HOW MANY EXTRA DEATHS THERE ARE IN THE SMOKING POPULATION. THERE WERE EIGHT OVER HERE IN THE SMOKERS, FOUR IN THE NONSMOKERS (INDICATING). EIGHT MINUS FOUR IS FOUR. FOUR EXTRA ONES OVER HERE AND THAT'S IT.
THE 400 MILLION CALCULATION IS NOTHING MORE. IT'S A CORE ON JUST THAT CALCULATION.
MR. FURR: Q. OKAY. WHEN YOU HAVE 1 MILLION
4568
STUDY SUBJECTS PARTICIPATING INSTEAD OF 200, IS YOUR FORMULA THAT YOU USE, INSTEAD OF ATTEMPTING TO CALCULATE -- EXCUSE ME -- COUNT THE DOTS BY HAND --
A. OF COURSE. THE DOTS WERE TO HELP EXPLAIN THINGS. THE COMPUTER DOESN'T KNOW HOW TO LOOK AT DOTS. SO THERE'S A BIT OF ARITHMETIC IN THE FORM OF A FORMULA THAT THE COMPUTER KNOWS. AND WHEN THE COMPUTER APPLIES THE FORMULA -- THIS IS AN IMPORTANT POINT -- IT GETS EXACTLY WHAT WE GET, FOUR.
IT ISN'T A DIFFERENT ANSWER. IT'S ALWAYS GOING TO BE THE SAME AS I JUST SHOWED IT. JUST, OF COURSE, IT DOESN'T COUNT DOTS. IT USES A FORMULA.
MR. FURR: LET ME ASK YOU TO USE WHAT WE MARKED

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AS DEFENDANTS' EXHIBIT 6279.
(DOCUMENT MORE PARTICULARLY
LISTED IN THE INDEX MARKED
FOR IDENTIFICATION DEFENDANTS'
EXHIBIT # 6279)
MR. FURR: Q. I ASK YOU TO EXPLAIN TO THE JURY
THE FORMULA THAT IS USED TO CALCULATE ATTRIBUTABLE DEATHS MORTALITY FROM THE CPS-II.
THE COURT: WHAT IS THE TITLE OF 6279?
MR. FURR: IT'S ALSO TITLED "ILLUSTRATION OF 'ATTRIBUTABLE' DEATHS CALCULATION," BUT THIS IS THE CHART THAT HAS THE FORMULA ON THE BOTTOM.
THE COURT: OKAY.
THE WITNESS: OKAY. THIS SAME CHART, WHERE WE WERE EASILY ABLE TO COUNT THAT, THERE WERE FOUR EXTRA DEATHS
4569
IN THE SMOKER GROUP.
I'M NOT GOING TO DO THE SAME CALCULATIONS THE WAY
THE COMPUTER DOES DO IT. WHAT THE COMPUTER DOES IS FIRST CALCULATE UP THE PERCENT OF THE DEATH RATE. THERE'S FOUR OUT OF 100 IN THE NONSMOKER GROUP. THAT'S 4 PERCENT.
AND THEN IT WILL CALCULATE THE PERCENT OF THE DEATH RATE IN THE SMOKER GROUP, AND IT GETS 8 PERCENT.
AND THEN, IN A WAY THAT SEEMS MORE COMPLICATED THAN NECESSARY, BECAUSE AS HUMAN BEINGS WE CAN COUNT THE DOTS AND THE COMPUTER CAN'T, IT THEN GOES THROUGH THIS RATHER LONG ARITHMETIC. IT TAKES THE DEATH RATE, 8 PERCENT,
AND DIVIDES IT BY THE 4 PERCENT. THAT'S CALLED A RELATIVE RISK, A RELATIVE RISK OF TWO. 8 PERCENT IS TWICE AS BIG AS
4 PERCENT THAT GOES IN HERE, WHERE IT'S WRITTEN RELATIVE RISK, TWO.
THEN IT FIGURES OUT HOW MANY SMOKERS THERE ARE COMPARED TO THE TOTAL. IN THIS CASE, I HAVE GOT 100 SMOKERS
OUT OF 200 TOTAL PEOPLE. SO IT PUTS 100 DIVIDED BY 200. THAT'S THE SMOKING PROPORTION, SOMETIMES CALLED THE PREVALENCY OF SMOKING. BUT IN EVERYDAY LANGUAGE, IT'S JUST
THE PROPORTION OF SMOKERS.
AND THEN IT COUNTS UP THE TOTAL NUMBER OF DEATHS
IN SMOKERS AND NONSMOKERS COMBINED. THERE WERE 12 TOTAL, FOUR OVER HERE AND EIGHT OVER HERE. AND IT PUTS THE NUMBER
12 HERE.
IT GOES THROUGH THIS COMPLICATED ARITHMETIC THAT
SEEMS, I MUST ADMIT, ON ITS FACE TO SEEM LIKE MORE THAN IS NECESSARY, BUT THE COMPUTER CAN DO THIS KIND OF WORK VERY
4570
FAST. SO THAT'S THE WAY WE DO IT.
AND SURE ENOUGH, IT DOES ALL THAT ARITHMETIC, AND
IT GETS A FOUR, EXACTLY THE SAME AS IF YOU COUNTED THEM BY EYE.
Q. OKAY. I WANT TO MAKE SURE WE ALL UNDERSTAND SOMETHING.
THIS ATTRIBUTABLE DEATHS CALCULATION IS A

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STATISTICAL CALCULATION, ISN'T IT?
A. YES, IT'S A STATISTICAL FORMULA.
Q. AND THIS IS THE FORMULA THAT THE CDC AND OTHERS HAVE USED TO CALCULATE SMOKING-ATTRIBUTABLE MORTALITY; IS THAT CORRECT?
A. FOR SMOKING-ATTRIBUTABLE MORTALITY AND OTHER KINDS OF MORTALITY. IT'S USED FOR VARIOUS RISK FACTORS, INCLUDING SMOKING.
Q. HAVE A SEAT AGAIN, PLEASE.
WHEN THE CDC CALCULATED SMOKING-ATTRIBUTABLE MORTALITY, DID THE CDC ACTUALLY GO OUT AND REVIEW AUTOPSY REPORTS OR DEATH CERTIFICATES RELATED TO THE STUDY SUBJECTS?
A. NO, NOT AT ALL.
THEY SIMPLY APPLIED THE FORMULA THAT I SHOWED, WHICH HAS THE RESULT OF TELLING US HOW MANY MORE DEATHS THERE ARE IN THE SMOKING POPULATION WHEN COMPARED TO THE NONSMOKING POPULATION.
Q. WHEN THE CDC CALCULATED THIS SMOKING-ATTRIBUTABLE MORTALITY ESTIMATE, DID THE CDC ACTUALLY GO OUT AND REVIEW MEDICAL RECORDS AND TALK TO THE DOCTORS OF THE PARTICIPANTS OF THE STUDY THAT HAD DIED IN THE INTERVENING FOUR YEARS?

4571

A. NO. IT'S JUST BASED ON THE QUESTIONNAIRE RESULTS, ON THE FOLLOW-UP, AND THE FORMULA.
Q. LET ME ASK YOU ABOUT THIS FORMULA THAT YOU JUST SHOWED US.
DO YOU KNOW WHO INVENTED THAT FORMULA?
A. YES.
Q. AND WHO IS THAT?
A. HIS NAME WAS MORTON LEVIN. HE PUBLISHED AN ARTICLE IN 1953 WHERE HE DEVELOPED THAT FORMULA.
THE COURT: COULD I SEE WHAT YOU JUST SHOWED THE JURY?
MR. FURR: YES. IT WAS THE LAST CHART, YOUR HONOR, 6279.
THE COURT: OKAY. I THOUGHT IT WAS A NEW CHART.
MR. FURR: Q. AND THAT FORMULA WAS DEVELOPED BY A MAN NAMED LEVIN?
A. YES.
Q. (WRITING ON BOARD)
WHEN WAS IT PUBLISHED?
A. 1953.
Q. HAVE YOU REVIEWED MR. LEVIN'S PUBLICATIONS RELATED TO THE DEVELOPMENT OF THAT FORMULA?
A. YES. I'VE GOT IT HERE, IF YOU WANT.
Q. YOU'VE GOT IT HERE WITH YOU. MR. BROWN MAY WANT TO ASK YOU SOME QUESTIONS ABOUT IT, SO KEEP IT UP THERE.
IS THERE ANYTHING INHERENTLY WRONG WITH -- INACCURATE FROM A STATISTICAL PERSPECTIVE IN USING THE FORMULA DEVELOPED BY MR. LEVIN TO CALCULATE

4572

SMOKING-ATTRIBUTABLE MORTALITY?
A. WELL, THAT'S A MORE COMPLICATED QUESTION THAN YOU MAY REALIZE. SO LET ME SPEAK TO THE FIRST PART OF YOUR QUESTION ABOUT ANYTHING WRONG WITH THE FORMULA, THAT PART.
Q. OKAY.

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A. AND THEN, IF YOU COULD ASK MAYBE ANOTHER QUESTION ABOUT THE USE OF THE FORMULA, BECAUSE IT'S -- THERE'S A DISTINCTION THAT'S IMPORTANT.

AS TO THE CORRECTNESS OF THE FORMULA, THERE IS NOTHING WRONG WITH THE FORMULA. IT'S A PERFECTLY GOOD FORMULA. OKAY?

BUT JUST LIKE ANY FORMULA, IT CAN BE MISUSED. AND SO YOU COULD MAKE A PERFECTLY CORRECT FORMULA, USE IT IMPROPERLY AND GET A WRONG ANSWER.

BUT YOU CAN'T BLAME THIS ON THE FORMULA. YOU HAVE TO BLAME THAT ON YOURSELF, FOR USING IT IN A WAY YOU SHOULDN'T.

Q. ARE THERE CONDITIONS UNDER WHICH IT WOULD BE INAPPROPRIATE TO USE THE LEVIN FORMULA TO CALCULATE -- TO MAKE ATTRIBUTABLE MORTALITY CALCULATIONS?

MR. BROWN: OBJECTION. FOUNDATION AND QUALIFICATION.

THE COURT: ARE YOU GIVING THIS ANSWER FROM A STATISTICAL AS OPPOSED TO ANY KIND OF A MEDICAL JUDGMENT OR CONCLUSION?

THE WITNESS: A STATISTICAL PERSPECTIVE, YOUR HONOR, EXCLUSIVELY.

THE COURT: I'M GOING TO ALLOW THE ANSWER, THEN.

4573

THE WITNESS: YES. THERE ARE LIMITATIONS ON THE PROPER USE OF THE FORMULA.

AND THEY'RE DISCUSSED BY LEVIN IN THE SAME ARTICLE WHERE HE FIRST WROTE DOWN THE FORMULA.

MR. FURR: Q. AND HAS THE SURGEON GENERAL ALSO DISCUSSED LIMITATIONS UPON THE USE OF THE LEVIN FORMULA TO MAKE ATTRIBUTABLE MORTALITY CALCULATIONS?

MR. BROWN: OBJECTION. HEARSAY.

THE COURT: SUSTAINED.

MR. FURR: Q. HAVE YOU REVIEWED THE 1996 SURGEON GENERAL'S REPORT?

A. YES. THAT'S THE ONE ON EXERCISE.

MR. BROWN: I'M SORRY. I COULDN'T HEAR THE YEAR.

MR. FURR: 1996.

Q. AND IS YOUR OPINION ABOUT THE CONDITIONS UNDER WHICH THE LEVIN FORMULA CAN BE USED APPROPRIATELY TO MAKE ATTRIBUTABLE MORTALITY CALCULATIONS BASED, IN PART, ON THE 1996 SURGEON GENERAL'S REPORT?

MR. BROWN: SAME OBJECTION.

THE COURT: NO, HE IS NOT ASKING HIM THE CONTENT. HE IS JUST SAYING -- HE'S JUST ASKING HIM IF HE BASES IT, IN PART, ON THAT REPORT.

HE'S NOT ASKING HIM FOR THE SUBSTANCE OF THE REPORT. HE'S ASKING HIM FOR WHETHER HE RELIES ON THAT REPORT.

AN EXPERT WITNESS IS ALLOWED TO STATE THE BASIS FOR HIS OPINION WITHOUT GIVING YOU, ON DIRECT EXAMINATION,

4574

THE CONTENT.

THAT'S ALL HE'S ASKING. I'M GOING TO OVERRULE.

THE WITNESS: YES. THAT'S ONE OF THE BASES THAT I HAVE REVIEWED.

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THE COURT: DON'T TELL US THE CONTENT. YOU CAN TELL US, IN GENERAL, WHAT SUBJECT IS CONSIDERED, BUT DON'T TELL US THE CONTENT OF ANYTHING IN IT ON THIS QUESTION, PLEASE.
THE WITNESS: I HOPE I UNDERSTAND.
THE COURT: I DIDN'T SAY THAT YOU WERE GOING TO, BUT I DIDN'T KNOW WHETHER YOU KNEW WHAT THE LIMITATIONS WERE HERE.
THE WITNESS: I'M NOT SURE I DO, BUT I'LL TRY MY BEST.
THE COURT: OKAY.
THE WITNESS: THE SURGEON GENERAL REPORT ON PHYSICAL ACTIVITY AND HEALTH THAT I HAVE WITH ME DISCUSSES THE LIMITATIONS ON THE USE OF THIS FORMULA --
MR. BROWN: OBJECTION. MOVE TO STRIKE. HEARSAY.
THE WITNESS: -- THAT I MENTIONED.
MR. BROWN: I DON'T THINK THE WITNESS UNDERSTANDS.
MR. FURR: MAY I BE HEARD?
THE COURT: GO AHEAD.
MR. FURR: I THINK THE WITNESS DID STAY WITHIN THE BOUNDS OF YOUR HONOR'S RULING.
THE COURT: I THINK SO. I'M GOING TO LEAVE IT IN THE RECORD.

4575

YOU CAN CROSS ON IT, IF YOU WANT, MR. BROWN. I THINK THAT THAT DIDN'T GET INTO THE CONTENT OF IT.
MR. FURR: Q. OKAY, DR. WECKER. BASED UPON THE WORK OF MR. LEVIN, THE SURGEON GENERAL, AND YOUR EXPERIENCE, TRAINING, EDUCATION AS A STATISTICIAN, DO YOU HAVE AN OPINION WITH RESPECT TO THE CONDITIONS UNDER WHICH IT IS PROPER TO USE THE LEVIN FORMULA TO MAKE ATTRIBUTABLE MORTALITY CALCULATIONS?
A. YES.
MR. BROWN: OBJECTION. QUALIFICATIONS, FOUNDATION, 352. AND I THINK IT CALLS FOR A MEDICAL OPINION.
THE COURT: I'M GOING TO OVERRULE ALL OF THAT, AND I HAVE DONE THE 352 WEIGHING.
BUT IT'S WITHOUT PREJUDICE TO YOUR MOVING TO STRIKE THE ANSWER.
LET'S WAIT AND SEE WHAT THE ANSWER IS. I DON'T THINK IT NECESSARILY CALLS FOR A MEDICAL OPINION. AND I THINK THIS WITNESS HAS MADE IT CLEAR THAT HE HAS NO CLAIMS TO EXPERT STATUS IN MEDICAL MATTERS AND THAT HE WON'T BE GIVING US ANY MEDICAL OPINIONS.
SO HAVING HEARD ALL OF THAT, I'M GOING TO LET HIM ANSWER THIS QUESTION.
THE WITNESS: I'M NOT SURE I UNDERSTAND. I BELIEVE YOU'RE ASKING ME IF I HAVE AN OPINION OR IF I KNOW WHAT THE CONDITIONS ARE THAT ARE NECESSARY FOR THE PROPER APPLICATION OF THE LEVIN FORMULA.

4576

MR. FURR: Q. THAT'S CORRECT.
A. YES, I KNOW THAT.
Q. CAN YOU EXPLAIN TO THE JURY WHAT THOSE CONDITIONS

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ARE.
A. YES. THE CONDITIONS ARE THAT, WHEN YOU COMPARE TWO GROUPS WITH THE LEVIN FORMULA, THAT THERE CAN BE NO OTHER DIFFERENCES BETWEEN THE TWO GROUPS OTHER THAN THE ONE DIFFERENCE WHICH DEFINES THE TWO GROUPS YOU'RE COMPARING, SMOKERS AND NONSMOKERS.

IT HAS TO BE THE CASE, TO GET A CORRECT RESULT FROM THE LEVIN FORMULA, THAT WHEN IT COMES TO DIET OR EXERCISE OR TOXIC EXPOSURE OR ANY ONE OF A NUMBER OF RISK FACTORS, THAT THEY HAVE TO BE EVENLY SPREAD IN THE TWO GROUPS.

IF THAT'S NOT TRUE -- LET'S SAY THERE'S A LOT MORE RISK FACTORS AMONG THE SMOKERS, THEN YOU ARE NOT LOOKING AT JUST THE SMOKING PHONOMENON ANYMORE. YOU MAY BE LABELED SMOKERS, BUT YOU'RE LOOKING AT THE EFFECT OF SMOKING AND DIET AND EXERCISE AND A BUNCH OF OTHER THINGS.

AND SO THE LEVIN FORMULA OVERSTATES IN THAT CASE. IT'S OFF.

Q. HOW DOES THIS CONDITION THAT YOU JUST DESCRIBED FOR US UNDER WHICH IT'S APPROPRIATE TO USE THE LEVIN FORMULA RELATE TO THE STATISTICAL PRINCIPLE OF CONFOUNDING THAT YOU EXPLAINED TO US EARLIER?

A. CONFOUNDING SHOWS UP IN A LOT OF DIFFERENT WAYS WHEN DOING STATISTICAL ESTIMATES, AND MANY OTHER KINDS OF ESTIMATES OTHER THAN THE LEVIN FORMULA.

4577

THIS IS A MANIFESTATION OF CONFOUNDING WITH THE LEVIN FORMULA. IT'S THE MIXING TOGETHER OF EFFECTS FROM DIFFERENT SOURCES.

SO ONE CAN NO LONGER SAY THAT THE OBSERVED EFFECT IS DUE TO ONE THING ONLY.

Q. AND DR. WECKER, HAVE YOU ANALYZED THE CPS-II DATA SET TO DETERMINE WHETHER OR NOT THOSE DATA SATISFY THE CONDITION FOR THE PROPER USE OF THE LEVIN FORMULA?

A. I HAVE DONE THAT ANALYSIS.

Q. LET ME ASK YOU FIRST TO EXPLAIN TO US THE MANNER IN WHICH YOU CONDUCTED THE ANALYSIS.

A. WHAT I DID WAS TAKE THE ENTIRE DATA SET, A MILLION QUESTIONNAIRES, AND I COMPARED SMOKERS AGAINST NONSMOKERS IN TERMS OF OTHER RISK FACTORS RECOGNIZED IN THE LITERATURE AND RECORDED IN THE SURVEY.

AND I JUST WENT THROUGH THESE VARIOUS RISK FACTORS, AND FOUND OUT WHETHER THEY ARE EVENLY SPREAD BETWEEN THE TWO GROUPS OR WHETHER MAYBE SMOKERS HAVE MORE OF THE RISK FACTORS OR LESS.

Q. OKAY. THE FIRST ANALYSIS YOU DID WAS BASED UPON RISK FACTORS REPORTED IN THE SCIENTIFIC LITERATURE; IS THAT CORRECT?

A. I THINK -- I'M CONFUSED BY THAT. YOU SAY "THE FIRST ANALYSIS."

THE ANALYIS WE ARE TALKING ABOUT. THERE AREN'T

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TWO HERE.
Q. THAT'S A BAD QUESTION. LET ME TRY AGAIN.
DID YOU ANALYZE THE CPS-II DATA SET ITSELF TO
4578
DETERMINE WHAT FACTORS WERE ASSOCIATED WITH INCREASED
MORTALITY WITHIN THE DATA SET?
A. YES, I ALSO DID THAT.
FOR EACH OF THE RISK FACTORS THAT I LOOKED
INTO,
NOT ONLY DID I LOOK AT THE LITERATURE TO NOTE THAT THERE
ARE
RECOGNIZED RISK FACTORS THAT WERE ALSO ASKED ABOUT ON THE
QUESTIONNAIRE, BECAUSE I HAVE TO HAVE THE DATA, BUT I
DOUBLE-CHECKED MYSELF THAT THEY INDEED WERE RISK FACTORS,
BECAUSE CALCULATING RISK FACTOR IS A STATISTICAL THING,
NOT
A MEDICAL THING.
IT'S STATISTICIANS WHO TEACH MEDICAL DOCTORS
WHAT
A RISK FACTOR IS, NOT THE OTHER WAY AROUND.
AND SO I CALCULATED ALL THOSE RISK FACTORS, AND
I
VERIFIED THAT ALL THE ONES THAT ARE GOING TO APPEAR ON THE
CHARTS WE HAVE COMING UP WERE INDEED RISK FACTORS FOR
MORTALITY.
Q. AND DID YOU, IN FACT, FIND DIFFERENCES IN
MORTALITY RISK FACTORS BETWEEN SMOKERS AND NONSMOKERS
OTHER
THAN SMOKING?
A. OH, YES. LOTS OF THEM.
MR. FURR: LET ME ASK YOU TO STEP DOWN AND USE
THE CHARTS THAT WE ARE GOING TO MARK AS 6280 AND 6281 TO
EXPLAIN TO THE JURY THE FACTORS FOR WHICH YOU COMPARED
SMOKERS AND NONSMOKERS.
(DOCUMENTS MORE PARTICULARLY
LISTED IN THE INDEX MARKED
FOR IDENTIFICATION DEFENDANTS'
EXHIBITS # 6280 AND 6281)
4579
THE COURT: AND AFTER YOU PUT THE STICKER ON,
COULD YOU JUST TURN THEM IN MY DIRECTION SO I SEE WHAT
THEY
ARE.
MR. FURR: THAT'S 6280 -- I'M NOT SURE HOW WE
ARE GOING TO DO THIS -- AND 6281.
THE COURT: OKAY.
Q. DR. WECKER, USING 6280 AND 81, WOULD YOU
EXPLAIN
TO US THE FACTORS THAT YOU USED TO COMPARE SMOKERS AND
NONSMOKERS AND WHY YOU USED THOSE FACTORS.
A. OKAY. LET ME START WITH 6280. THE FIRST ITEM
IS
THE RISK FACTOR OF "LITTLE OR NO EXERCISE."
I THINK IT WILL BE HELPFUL IF I GO TO THE
QUESTIONNAIRE, JUST TO MAKE CONTACT WITH THE SOURCE DATA.
THE SECOND PAGE OF THE QUESTIONNAIRE, THE TOP LEFT.
Q. INDICATE THE EXHIBIT NUMBER AS YOU GO.
A. YES. JUST TO BE SURE I'M CLEAR, I WILL SHOW
6275
(INDICATING). AND THAT'S THE SECOND PAGE OF THE
QUESTIONNAIRE.
MR. BROWN: I HAVE NO IDEA WHAT HE'S REFERRING
TO.

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THE WITNESS: 6275.
MR. BROWN: I DON'T KNOW WHAT THOSE NUMBERS ARE. I'VE NEVER BEEN SHOWN THOSE. OKAY.
THE COURT: THOSE HAVE ALREADY BEEN MARKED HERE IN OPEN COURT.
MR. FURR: THESE ARE THE EXHIBITS WE MARKED IN OPEN COURT AS WE PROCEEDED THROUGH THE EXAMINATION.
THE COURT: OKAY.

4580

THE WITNESS: OKAY.
MR. BROWN: IF THERE WAS JUST A SECOND BETWEEN THE NUMBER AND MY BEING ABLE TO EVEN SEE IT, THAT WOULD BE ALL RIGHT.
THE WITNESS: I WAS HOPING TO BRING SOME CLARITY. I'M NOT SURE IF I'VE SUCCEEDED HERE.
I HAVE GOT THESE CHARTS, 6280 AND 6281. AND I WANTED TO SHOW, BEFORE I EXPLAIN THOSE TWO CHARTS, THAT THEY HAVE A CONNECTION TO THE QUESTIONNAIRE.
AND THE FIRST QUESTION ON 6280, THE FIRST ISSUE IS "LITTLE OR NO EXERCISE," AND THEN THERE'S A BUNCH MORE RISK FACTORS THAT I'LL NOT SPEND AS MUCH TIME ON.
"LITTLE OR NO EXERCISE" COMES FROM THE SECOND PAGE OF THE QUESTIONNAIRE, WHERE IT SAYS AT THE TOP: "HOW MUCH EXERCISE DO YOU GET?"
AND IF YOU CHECK "NONE" OR "SLIGHT," RATHER THAN CHECK "MODERATE" OR "NEVER," "NONE" OR "SLIGHT," I CALL THAT "LITTLE OR NO EXERCISE." I COULD HAVE CALLED IT "NONE" OR "SLIGHT," BUT "LITTLE OR NO" SEEMED TO MAKE SENSE.
AND THEN I LOOKED AT THE COLLECTION OF SMOKERS TO FIND OUT WHAT PERCENT OF THEM GOT LITTLE OR NO EXERCISE, BECAUSE THAT'S A RISK FACTOR. WE SHOULD DO OUR EXERCISES.
AND THEN I LOOKED AT THE PERCENTAGES OF NONSMOKERS. I LOOKED AT SMOKERS AND NONSMOKERS. I LOOKED AT THE PERCENTAGE OF EACH GROUP THAT IS GETTING THE RISK FACTOR, WHICH IS THE COUCH POTATO, "LITTLE OR NO EXERCISE."
AND THEN I DETERMINED, BY JUST COMPARING WHICH OF THE TWO GROUPS HAD THE MOST OF THAT RISK FACTOR. IF I HAD A

4581

MARKER AND WERE ALLOWED TO DO SO, JUST TO KEEP IT STRAIGHT, I'D PUT A LITTLE CHECK IN THE BOX HERE UNDER "SMOKERS," BECAUSE IT TURNED OUT THAT IT'S SMOKERS THAT HAVE LESS EXERCISE, AND THEREFORE MORE OF THAT RISK FACTOR.
Q. OKAY.
A. NOW THAT WE HAVE SEEN THAT ONE, I'LL JUST CONTINUE WITH THE OTHERS.
Q. WHY DON'T YOU USE ONE MORE TO EXPLAIN TO US HOW YOU CONTINUED MAKING THESE ANALYSES BETWEEN SMOKERS AND NONSMOKERS.
A. WELL, YOU MEAN WITH THE QUESTIONNAIRE?
Q. YES.
A. I COULD DO THE FRIED FOODS.
Q. SHOW IT TO MR. BROWN, IF YOU WOULD, PLEASE.
A. LOOKING AT 6276, I WILL TAKE THE TOP ONE OFF OF THIS OTHER CHART, EATING MORE FRIED FOODS.

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THESE ARE THE -- CHART 6281 IS THE EATING AND DRINKING CHOICES. AND SO I CAN FIND OUT WHICH GROUP, SMOKERS OR NONSMOKERS, EAT MORE FRIED FOODS BY JUST LOOKING AT THE QUESTIONNAIRE, CALCULATING A PERCENTAGE THAT HAS A HIGHER PROPORTION OF THESE FRIED FOODS THAT ARE DOWN HERE IN QUESTION 2.

IF THEY CHECKED "DO NOT EAT FRIED FOODS," THEN THEY ARE DEFINITELY NOT -- OR IF THEY CHECKED "A LOT OF FRIED FOODS," THEN I COMPARE THEM IN HOW MUCH THEY CHECK. AND I SEE WHICH DOES MORE.

AND THE RESULT WAS, AGAIN, SMOKERS, HAVING REPORTED ON THEIR QUESTIONNAIRES THAT THEY EAT MORE FRIED

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FOODS THAN NONSMOKERS, THAT'S A RISK FACTOR. FRIED FOODS ARE A RISK FACTOR.

IF I WERE MAKING CHECK MARKS, I WOULD PUT A CHECK MARK IN THE "SMOKER" BOX.

Q. OKAY. LET ME ASK A COUPLE OF QUESTIONS.

EACH OF THESE FACTORS THAT YOU LISTED AS A LIFESTYLE FACTOR, THAT IS A FACTOR THAT HAS BEEN REPORTED IN THE SCIENTIFIC LITERATURE AND VERIFIED BY YOU IN THE CPS-II DATA TO BE A STATISTICAL RISK FACTOR FOR DYING YOUNGER; IS THAT CORRECT?

A. FOR DYING.

Q. FOR DYING?

A. IF YOU LOOK, LIKE, SAY AT A FOUR-YEAR PERIOD, AND THE GROUP THAT HAS A RISK FACTOR, IT HAS A HIGHER DEATH RATE.

Q. AND YOU COMPARED THE PERCENTAGE OF SMOKERS VERSUS THE PERCENTAGE OF NONSMOKERS IN THE CPS-II DATA ON THE BASIS OF EACH OF THESE FACTORS; IS THAT CORRECT?

A. YES.

Q. OKAY. YOU BROUGHT WITH YOU TWO CHARTS THAT DEMONSTRATE THE GROUP WHICH YOU FOUND TO HAVE THE HIGHER PERCENTAGE FOR -- LIKELIHOOD OF HAVING THE RISK FACTOR THAT'S BEING LOOKED AT; IS THAT CORRECT?

A. YES.

MR. FURR: LET ME ASK YOU TO LOOK AT WHAT WE'VE MARKED AS 6282 AND 6283.

(DOCUMENTS MORE PARTICULARLY LISTED IN THE INDEX MARKED

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FOR IDENTIFICATION DEFENDANTS' EXHIBIT # 6282 AND 6283)

MR. FURR: YOUR HONOR, THE NEXT TWO CHARTS ARE TITLED "LIFESTYLE FACTORS" WITH CHECKS IN BOXES.

THE COURT: I UNDERSTAND.

MR. FURR: Q. AND I ASK YOU TO EXPLAIN WHAT YOU FOUND WHEN YOU ANALYZED THE CPS-II DATABASE.

A. WELL, WITH RESPECT TO THE FIRST CHART, WHICH IS 6282, I FOUND THAT FOR EVERY ONE OF THESE RISK FACTORS, EXERCISE, TOXIC EXPOSURES, AND THEN THESE MEASURES OF SOCIAL SUPPORT, WHICH I DISCUSSED EARLIER, HAVING FRIENDS --

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ACTUALLY, THE RISK FACTOR IS NOT HAVING FRIENDS, BEING NOT MARRIED. THAT'S A RISK FACTOR -- FOR EVERY ONE OF THOSE, THE SMOKERS HAD MORE OF THE RISK FACTORS, EVERY ONE.

AND THEN ON CHART 6283, WHERE THE "EATING AND DRINKING RISK FACTORS" WERE, FOR FRIED FOODS AND HIGH FAT FOODS, AND MOST ALL OF THE OTHERS EXCEPT TWO, AGAIN, THE SMOKERS HAD MORE OF THE RISK FACTOR, TAKING LESS VITAMINS, A RISK FACTOR, JUST TO PICK ONE EXAMPLE.

BUT THERE WERE TWO EXCEPTIONS. IT WAS THE NONSMOKERS THAT ATE MORE DESSERT AND MORE BUTTER AND MARGARINE.

Q. OKAY. THE JURY HAS ALSO HEARD THE TERM "STATISTICAL SIGNIFICANCE" DURING THE COURSE OF THE TRIAL.

THAT'S A STATISTICAL PRINCIPLE, ISN'T IT, DR. WECKER?

A. YES.

Q. WOULD YOU EXPLAIN TO THE JURY WHAT "STATISTICAL

4584

SIGNIFICANCE" MEANS.

A. "STATISTICAL SIGNIFICANCE" IS A TERM IN A SET OF PROCEDURES DEVISED BY STATISTICIANS TO DISTINGUISH WHEN YOU SEE A DIFFERENCE, IF THE DIFFERENCE IS REAL OR IF IT MIGHT JUST BE A FLUKE FROM SAMPLING.

LET ME GIVE AN EXAMPLE. IF I WERE TESTING WHETHER A COIN WAS A FAIR COIN, HALF -- 50 PERCENT CHANCE HEADS, 50 PERCENT CHANCE TAILS, AND I TOSSED IT ONLY 10 TIMES, I GOT SIX HEADS AND FOUR TAILS, I WOULD DO MY FORMULAS AND CONCLUDE THAT'S NOT ENOUGH EVIDENCE TO DECLARE STATISTICALLY SIGNIFICANT BIAS IN THAT COIN. WE DIDN'T GIVE IT VERY MUCH -- IT WAS PRETTY CLOSE TO 50 PERCENT. THE FORMULAS FIGURE THAT OUT.

BUT IF I FLIPPED IT 1,000 TIMES AND I GOT 80 PERCENT HEADS, THE FORMULAS VERY QUICKLY FIGURE OUT A THIS COIN IS NOT A FAIR COIN.

THE SAME PRINCIPLE APPLIES HERE. WHEN I HAVE CHECKED THAT SMOKERS HAVE MORE, THE ISSUE ARISES, WELL, IT MAY BE FLUKE OF SAMPLING, BECAUSE WE ONLY HAD A MILLION PEOPLE, OR IS THIS SOMETHING REAL, THAT'S SIGNIFICANTLY SIGNIFICANT?

Q. THAT WAS GOING TO BE MY NEXT QUESTION.

DID YOU CONDUCT STATISTICAL SIGNIFICANCE TESTING ON THE COMPARISONS YOU MADE FOR EACH OF THESE LIFESTYLE FACTORS BETWEEN SMOKERS AND NONSMOKERS?

A. YES.

Q. AND ARE THE DIFFERENCES THAT YOU'VE INDICATED HERE ON THESE CHARTS STATISTICALLY SIGNIFICANT DIFFERENCES?

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A. YES, THEY ARE.

MR. BROWN: OBJECTION. CALLS FOR A MEDICAL OPINION.

MOVE TO STRIKE THE ANSWER.

THE COURT: OVERRULED.

THE WITNESS: EVERY ONE IS STATISTICALLY SIGNIFICANT.

MR. FURR: Q. LET ME ASK YOU, WHEN WE CHECK HERE, FOR EXAMPLE, THAT SMOKERS GOT STATISTICALLY LESS

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EXERCISE THAN NEVER-SMOKERS, DOES THAT MEAN THAT EVERY SMOKER GETS LESS EXERCISE THAN EVERY NEVER-SMOKER?

A. NO. IT'S JUST AN AVERAGE RESULT. THERE IS A TENDENCY TOWARD LESS EXERCISE.

Q. OKAY.

DR. WECKER, BASED UPON THE ANALYSIS THAT YOU JUST PRESENTED TO US OF THE DIFFERENT DISTRIBUTION OF THESE LIFESTYLE FACTORS BETWEEN SMOKERS AND NONSMOKERS, DO YOU HAVE AN OPINION AS TO WHETHER OR NOT THE CPS-II DATA SET SATISFIES THE CONDITION UNDER WHICH THE LEVIN FORMULA CAN BE USED TO ACCURATELY CALCULATE ATTRIBUTABLE MORTALITY PROJECTIONS?

MR. BROWN: OBJECTION. CALLS FOR EPIDEMIOLOGICAL OPINION. NOT QUALIFIED.

THE COURT: OVERRULED.

THE WITNESS: YES, I HAVE THAT OPINION.

MR. FURR: Q. WHAT IS YOUR OPINION?

A. THE CONDITIONS REQUIRED BY THE LEVIN FORMULA ARE NOT SATISFIED BECAUSE THE TWO GROUPS, SMOKERS AND

4586

NONSMOKERS, DO NOT DIFFER ON ONE THING ONLY, BUT THEY DIFFER ON MANY THINGS.

SO THE LEVIN FORMULA CAN NO LONGER CALCULATE THE EFFECT OF SMOKING ALONE, BUT INSTEAD WILL REPORT THE EFFECT OF SMOKING OF 24-PLUS THINGS THAT THE CPS-II DIDN'T EVEN MEASURE. PERHAPS AT LEAST THE 24.

Q. AND THAT LEVIN FORMULA IS THE FORMULA THAT THE CDC USED TO CALCULATE SMOKING-ATTRIBUTABLE MORTALITY BASED ON THE CPS-II DATA, ISN'T IT?

A. THAT'S A FACT.

Q. OKAY. DR. WECKER, YOU JUST DEMONSTRATED TO US YOUR FINDINGS WITH RESPECT TO THE LIKELIHOOD OF INDIVIDUAL RISK FACTORS OCCURRING IN SMOKERS VERSUS NONSMOKERS; IS THAT CORRECT?

A. YES.

Q. DID YOU ALSO ANALYZE THE CPS-II DATA TO DETERMINE WHETHER OR NOT THESE LIFESTYLE RISK FACTORS THAT YOU HAVE IDENTIFIED FOR US TEND TO CLUSTER IN INDIVIDUAL SMOKERS?

A. YES, I DID THAT.

Q. DID YOU PREPARE A CHART THAT ILLUSTRATES YOUR FINDINGS?

A. YES.

MR. FURR: LET ME ASK YOU TO LOOK AT WHAT WE'VE MARKED AS 6284, WHICH IS A CHART TITLED "LIFESTYLE FACTORS THAT INCREASE MORTALITY RISK SMOKERS VERSUS NEVER-SMOKERS."

(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION DEFENDANTS'

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EXHIBIT # 6284)

MR. FURR: Q. AND I ASK YOU TO EXPLAIN WHAT YOU FOUND WHEN YOU LOOKED AT THAT QUESTION.

MR. BROWN: I'M GOING TO OBJECT TO THIS CHART

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AND I'D LIKE TO BRING IT BACK IN THE HALLWAY AND SHOW YOU WHY.

THE COURT: OKAY.

(COURT AND COUNSEL CONFER OUTSIDE THE PRESENCE OF THE JURY)

THE COURT: AFTER A SIDEBAR, I THINK COUNSEL HAVE WORKED THIS OUT BETWEEN THEMSELVES.

LET'S PROCEED AND SEE IF THERE'S ANY OBJECTIONS.

LET'S SEE HOW WE GO.

MR. FURR: Q. DR. WECKER --

THE COURT: I TAKE IT THAT, AFTER THE SIDEBAR, WITH THE UNDERSTANDING THAT WE REACHED AT THE SIDEBAR, THERE IS NO OBJECTION TO 6284 BEING SHOWN TO THE JURY, PRESERVING YOUR RIGHT TO OBJECT, DEPENDING ON HOW THINGS GO.

MR. BROWN: THAT WE DON'T GO BACK TO THAT THICKET.

THE COURT: OKAY. I THINK IT'S BEEN WORKED OUT.

MR. FURR: Q. DR. WECKER, I WANT TO ASK YOU SOME QUESTIONS ABOUT 6284.

BEFORE WE DO THAT, I WANT TO TALK ABOUT THE LAST ANALYSIS THAT WE JUST DISCUSSED AND MAKE SURE WE ARE CLEAR PRECISELY WHAT YOU INTENDED TO CONVEY TO THE JURY.

WHEN WE WERE LOOKING AT THE TWO CHARTS THAT YOU PREPARED BASED ON YOUR ANALYSES OF LIFESTYLE FACTORS AND THE

4588

UNEVEN DISTRIBUTION OF THOSE FACTORS BETWEEN SMOKERS AND NONSMOKERS, YOU WERE TESTIFYING THAT THOSE LIFESTYLE FACTORS ARE FACTORS THAT ARE STATISTICALLY ASSOCIATED WITH AN INCREASED MORTALITY; IS THAT CORRECT?

A. THAT'S TRUE.

Q. AND TO BE CLEAR, YOU WERE NOT TESTIFYING THAT EACH OF THESE FACTORS HAS BEEN PROVEN MEDICALLY TO BE A CAUSATION OF MORTALITY; IS THAT CORRECT?

A. THAT'S TRUE. I HAVE NO OPINION ABOUT CAUSE. THIS IS JUST A STATISTICAL ASSOCIATION CALLED A RISK FACTOR.

Q. BY THE WAY, DR. WECKER, THE PHRASE "RISK FACTOR," THAT'S A STATISTICAL TERM?

A. YES.

Q. WHAT DOES IT MEAN?

A. IT MEANS JUST THIS: IF YOU HAVE TWO GROUPS THAT ARE DISTINGUISHED BY SOME LABEL, THAT IS THE EXERCISERS AND THE NONEXERCISERS, IF YOU NOTICE A DIFFERENCE IN THE DEATH RATES IN THOSE TWO GROUPS, THEN EXERCISE BECOMES A RISK FACTOR. IN THE CASE OF EXERCISE, LACK OF EXERCISE.

MR. BROWN: I MOVE TO STRIKE THAT.

MR. FURR: THAT'S WHAT IS A RISK FACTOR.

MR. BROWN: USING "RISK" THERE FALLS INTO THE PROBLEM WE HAVE.

MR. FURR: YOUR HONOR, THAT'S A STATISTICAL DEFINITION OF THE TERM "RISK FACTOR." THAT'S WHAT IT SAYS.

MR. BROWN: I DON'T THINK SO.

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THE COURT: WHY DON'T YOU ASK HIM SOME MORE QUESTIONS SO THAT IT'S CLEAR TO THE JURY WHAT THE WORD

4589

"RISK" MEANS IN THAT CONTEXT, AND WHETHER IT CONNOTES ANYTHING ABOUT CAUSATION OR WHETHER IT IS LIMITED TO A STATISTICAL ASSOCIATION. BECAUSE I THINK WHAT MR. BROWN IS SAYING IS THERE'S SOME POTENTIAL CONFUSION WITH THE USE OF THE WORD "RISK," AND I THINK WE NEED TO HAVE IT FLESHED OUT A LITTLE FURTHER BEFORE I RULE ON HIS MOTION.

MR. FURR: OKAY.

Q. DR. WECKER, WHEN YOU USE THE TERM "RISK FACTOR," IS IT CORRECT THAT YOU ARE USING THAT PHRASE TO DESCRIBE ONE FACTOR THAT IS STATISTICALLY ASSOCIATED WITH AN INCREASED LIKELIHOOD OF A SECOND EVENT AND FACTOR OCCURRING?

MR. BROWN: YOUR HONOR, SAME OBJECTION. "INCREASED LIKELIHOOD" IS THE PROBLEM THERE.

MR. FURR: THAT'S PURELY A STATISTICAL CONCEPT.

MR. BROWN: THAT'S THE ARGUMENT.

THE COURT: WHY DON'T YOU CHANGE THE WORD "LIKELIHOOD" TO "INCIDENCE." I THINK IT WILL SOLVE EVERYBODY'S PROBLEM.

MR. BROWN: I DIDN'T HEAR YOUR WORD.

THE COURT: "INCIDENCE."

IF YOU ASK THE QUESTION THAT WAY, YOU MAY BE ABLE TO FLESH OUT THE DISTINCTION HERE THAT AT LEAST MR. BROWN HAS IN MIND.

AND UNTIL I HEAR MORE, I'M NOT SURE WHETHER OR NOT I AGREE WITH HIM. SO WE NEED TO PURSUE THIS A LITTLE FURTHER. THE PROBLEM IS IN THE USE OF THE WORDS "LIKELIHOOD" AND "RISK" AND SO FORTH.

IF WE COULD EXPLAIN SUBSTANTIVELY WHAT WE ARE

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TALKING ABOUT WITHOUT USING WORDS THAT MAY HAVE MORE THAN ONE CONNOTATION. AND I HAVE IN MIND WHAT THE WITNESS HAS SAID. I THINK IT WOULD HELPFUL TO THE JURY AND IT WOULD BE HELPFUL TO THE COURT IN RULING ON THE MOTION.

DO YOU UNDERSTAND WHAT I'M SAYING?

MR. FURR: I DO.

THE COURT: WHY DON'T YOU PROCEED AND SEE IF YOU CAN DO THAT.

MR. FURR: Q. OKAY. LET ME ASK YOU FIRST, DR. WECKER, WHEN YOU USE THE TERM "LIKELIHOOD," AS WE USED IT IN RESPONSE TO THE LAST QUESTION, DO YOU MEAN TO IMPLY A CAUSAL RELATIONSHIP BETWEEN ONE FACTOR AND THE OTHER OR IS IT A STATISTICAL ASSOCIATION?

A. NOT A CAUSAL FACTOR. THAT'S THE IMPORTANT DISTINCTION. A RISK FACTOR IS JUST ANY PHENOMENA ASSOCIATED STATISTICALLY WITH HIGHER MORTALITY. IT DOESN'T MEAN IT CAUSES THE MORTALITY.

Q. OKAY.

A. TOBACCO USE IS A RISK FACTOR. IT DOESN'T MEAN IT CAUSES ANYTHING. IT COULD, AND I'M NOT HERE TO SAY IT

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DOESN'T, BUT THE STATISTICIAN CAN'T PROVE CAUSE WITH THIS KIND OF DATA.
THE COURT: YOU ARE NOT HERE TO SAY EITHER IT DOES OR DOESN'T?
THE WITNESS: I CANNOT.
THE COURT: YOU ARE NOT SAYING THAT IT CAN FIND TWO GROUPS OF THINGS THAT ARE ASSOCIATED -- YOU ARE NOT SAYING THAT THE ONE INCREASES THE CHANCE OF THE OTHER
4591
OCCURRING, BUT RATHER YOU ARE MERELY SAYING THAT THE TWO OF THEM COEXIST?
THE WITNESS: THAT'S EXACTLY RIGHT.
THE COURT: IN A STATISTICAL WAY?
THE WITNESS: THAT'S EXACTLY CORRECT.
THE COURT: DOES THAT TAKE CARE OF THE PROBLEM?
MR. BROWN: I THINK SO, YOUR HONOR.
THE COURT: OKAY.
MR. BROWN: HOPEFULLY, WE WON'T DRIFT BACK.
THE COURT: I THINK THERE'S BEEN SOME POTENTIAL ARGUMENT ABOUT WHAT WORDS MEAN, BUT I THINK THESE LAST SERIES OF QUESTIONS AND ANSWERS HAVE FLESHED IT OUT TO EVERYBODY'S SATISFACTION. AT LEAST, I HOPE SO.
IF NOT, ONE OF YOU HAS TO SPEAK UP. OTHERWISE, I'M GOING TO ASSUME THAT THIS HAS BEEN TAKEN CARE OF TO BOTH OF YOUR SATISFACTIONS.
MR. BROWN: THANK YOU, YOUR HONOR.
THE COURT: OKAY.
MR. FURR: Q. OKAY, DR. WECKER. USING THAT UNDERSTANDING OF WHAT THE TERM "RISK FACTORS" MEANS, DID YOU ANALYZE THE CPS-II DATA TO DETERMINE WHETHER OR NOT MORTALITY RISK FACTORS TEND TO CLUSTER IN SMOKERS VERSUS NONSMOKERS?
A. YES, I DID.
Q. COULD YOU EXPLAIN THE RESULTS OF YOUR ANALYSIS USING 6284.
A. THIS IS A MORE COMPLICATED CHART. IT WILL TAKE A MOMENT TO EXPLAIN IT.
4592
LET ME JUST PICK ONE OF THE BARS HERE, SAY THE ONE THAT HAS A 12 ON IT.
WHAT I DID WAS I WENT -- HAND ME THE QUESTIONNAIRE.
Q. THE QUESTIONNAIRE?
A. I WENT BACK TO THE QUESTIONNAIRE. AND I FOUND ALL THE PEOPLE THAT HAD EXACTLY 12 RISK FACTORS.
I SHOWED YOU 24 BEFORE. SOME PEOPLE HAD MORE THAN 12, SOME HAD LESS, BUT I FOUND ALL THE PEOPLE THAT EXACTLY 12.
AND THEN I TOOK THE PEOPLE THAT HAD EXACTLY 12 RISK FACTORS, AND I PUT THEM INTO TWO PILES, THE SMOKERS AND THE NONSMOKERS, AND REPORTED THE RESULTS ON THIS CHART HERE.
WHEN IT COMES TO 12 RISK FACTORS, IT IS THE CASE THAT APPROXIMATELY THE SMOKERS OUTNUMBER THE NONSMOKERS BY

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ABOUT 3-TO-1. FOR EVERY ONE NONSMOKER, THERE IS ABOUT THREE
SMOKERS WITH THE 12 RISK FACTORS. IF YOU GO TO HIGHER
NUMBERS OF RISK FACTORS, LIKE 13 OR 14, THE SMOKERS
PREDOMINATE AS MUCH AS ABOUT 5-TO-1.
AND THEN IF YOU GO DOWN TO THE PEOPLE WHO ARE
PERFECT, AS WE WISH WE ALL WERE, WITH ALMOST NO RISK
FACTORS, IT GOES THE OTHER WAY AROUND. IT'S THE NONSMOKERS
WHO ARE ALWAYS EATING THEIR LEAFY GREENS AND TAKING THEIR
VITAMINS.
WHAT THIS CHART ADDS IS THAT IT SHOWS THE
CLUSTERING OF LOTS OF RISK FACTORS TOGETHER IN THE SMOKING
POPULATION, OVERWHELMINGLY MORE SO THAN THE NONSMOKING
POPULATION.

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Q. BEFORE YOU SIT DOWN, DR. WECKER, BASED UPON THE
ANALYSIS THAT YOU JUST EXPLAINED TO US IN 6284, DO YOU HAVE
AN OPINION AS TO WHETHER OR NOT THE CPS-II DATABASE
SATISFIES THE CONDITION THAT YOU EXPLAINED TO US UNDER WHICH
THE LEVIN FORMULA CAN BE USED TO ACCURATELY CALCULATE THE
ATTRIBUTABLE MORTALITY CALCULATIONS?
A. I DO HAVE AN OPINION.
Q. AND WHAT IS THAT OPINION?
A. WELL, IT'S NOT PROPER TO USE THE LEVIN FORMULA
AND THEN CLAIM THAT ALL THE EXCESS DEATHS ARE DUE OR CAUSED
BY SMOKING ALONE.
MR. BROWN: MOVE TO STRIKE, YOUR HONOR.
OBJECTION TO THAT.
THE COURT: I'M GOING TO SUSTAIN AND STRIKE THAT
ANSWER.
MR. FURR: OKAY.
Q. DR. WECKER, YOU HEARD THE COURT'S RULING.
THE COURT: MY UNDERSTANDING ABOUT WHAT YOU TOLD
US IS YOU'RE NOT GIVING ANY OPINIONS ON CAUSATION; RIGHT?
THAT'S WHAT I UNDERSTOOD YOU TO SAY.
THE WITNESS: THAT'S TRUE, YOUR HONOR. I'M NOT
ABLE TO SAY -- NOT AS A STATISTICIAN, WITH THIS DATA, ABLE
TO SAY ONE WAY OR ANOTHER WHETHER ANY OF THOSE RISK FACTORS
CAUSE ANY DISEASE.
THE COURT: ALL RIGHT.
THE WITNESS: BUT I DO HAVE THE OPINION THAT
NOBODY ELSE CAN DO IT EITHER.
THE COURT: DON'T TELL US WHAT YOUR OPINION IS.

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I'M JUST SAYING TO YOU -- I THOUGHT WHAT YOU SAID AT THE
START OF THIS IS YOU'RE NOT GOING TO BE GIVING ANY MEDICAL
OPINIONS.
THE WITNESS: THIS IS ENTIRELY A STATISTICAL
OPINION.
THE COURT: YOU GO AHEAD WITH THE NEXT QUESTION.
MR. FURR: Q. THE LEVIN FORMULA. REMIND US,
DR. WECKER, WHAT IS THE LEVIN FORMULA USED FOR?
A. IT CALCULATES THE NUMBER OF EXTRA DEATHS IN ONE

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GROUP COMPARED TO ANOTHER, SUCH AS THE SMOKING GROUP COMPARED TO THE NONSMOKING GROUP.

Q. OKAY. AND LET ME ASK YOU AGAIN WHETHER, BASED ON THIS ANALYSIS, YOU HAVE AN OPINION AS TO WHETHER THE CPS-II DATABASE SATISFIES THE CONDITION UNDER WHICH IT'S APPROPRIATE TO USE THE LEVIN FORMULA TO CALCULATE ATTRIBUTABLE MORTALITY PROJECTIONS?

MR. BROWN: THAT'S THE SAME PROBLEM, ATTRIBUTABLE MORTALITY SMOKING DEATHS. THAT'S A MEDICAL CAUSE, MEDICAL OPINION. ASSOCIATION.

MR. FURR: I NEED TO BE HEARD ON THIS.

THE COURT: WHAT HE'S JUST SAYING IS, IF YOU WANT TO USE THE WORD "ASSOCIATION" RATHER THAN THE WORD "CAUSE," HE WILL NOT HAVE AN OBJECTION.

MR. FURR: I DIDN'T USE THE WORD "CAUSE."

MR. BROWN: HE SAID "ATTRIBUTABLE." IT'S THE SAME THING.

THE COURT: IF YOU CAN -- IF YOU CAN REPHRASE IT TO SPEAK IN STATISTICAL TERMS RATHER THAN IN MEDICAL TERMS,

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I THINK YOU WON'T GET AN OBJECTION.

IT MAY WELL BE THAT YOU CAN ASK THE QUESTION YOU WANT TO ASK WITHOUT GETTING INTO MEDICAL OBJECTIONS. I DON'T KNOW.

MR. FURR: Q. DR. WECKER, BASED ON YOUR ANALYSIS, DO YOU HAVE AN OPINION AS TO WHETHER OR NOT THE CPS-II DATABASE SATISFIES THE CONDITION UNDER WHICH THE LEVIN FORMULA CAN BE USED TO ACCURATELY STATISTICALLY CALCULATE MORTALITY -- EXCUSE ME -- ATTRIBUTABLE MORTALITY PROJECTIONS?

MR. BROWN: OBJECTION TO "ATTRIBUTABLE." WE'RE STILL TALKING ABOUT CAUSE.

THE COURT: CAN'T YOU -- THAT'S THE SAME QUESTION. CAN'T YOU WORD THIS QUESTION TO TAKE OUT AN INFERENCE OR AN IMPLICATION IN THE QUESTION THAT YOU'RE ASKING FOR A MEDICAL OPINION?

WHAT HE'S SAYING IS IF YOU START TALKING ABOUT "ATTRIBUTABLE HEALTH CONSEQUENCES," YOU SOUND LIKE YOU'RE ASKING FOR A MEDICAL OPINION.

SO THE QUESTION IS: CAN YOU WORD YOUR QUESTION IN A WAY THAT DOESN'T ELICIT A MEDICAL OPINION, OR AT LEAST ISN'T AMBIGUOUS IN THAT RESPECT?

MR. FURR: YOUR HONOR, I DON'T WANT TO ARGUE IN FRONT OF THE JURY. I NEED TO BE HEARD ON THIS.

THE COURT: LET'S HAVE A BRIEF SIDEBAR.

(COURT AND COUNSEL CONFER OUTSIDE THE PRESENCE OF THE JURY)

THE COURT: BACK ON THE RECORD.

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I'M ONCE AGAIN HOPEFUL THAT THIS HAS BEEN WORKED OUT. I UNDERSTAND YOU ARE GOING TO WITHDRAW THAT QUESTION.

MR. FURR: I WILL WITHDRAW THE QUESTION AND ASK IT AGAIN.

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THE COURT: OKAY.
MR. FURR: I WILL ASK A DIFFERENT QUESTION.
THE COURT: OKAY.
MR. FURR: Q. DR. WECKER, BASED ON YOUR ANALYSIS IN 6284, DO YOU HAVE AN OPINION AS TO WHETHER OR NOT THE CPS-II DATA SET SATISFIES THE CONDITION UNDER WHICH IT'S APPROPRIATE TO USE THE LEVIN FORMULA?
A. I DO.
Q. AND WHAT IS THAT OPINION?
A. IT DOES NOT SATISFY THAT CONDITION.
Q. THANK YOU.
DR. WECKER, WE BEGAN THIS DISCUSSION TODAY BY TALKING ABOUT THE USE OF THE LEVIN FORMULA TO CALCULATE ATTRIBUTABLE RISK FOR MORTALITY FROM SMOKING; IS THAT CORRECT?
A. YES.
Q. CAN THAT FORMULA BE USED TO CALCULATE -- TO MAKE THOSE SAME TYPE OF CALCULATIONS FOR OTHER FACTORS?
A. YES.
Q. AND HAVE YOU DONE SO?
A. YES.
Q. WHAT OTHER FACTORS HAVE YOU USED THE LEVIN FORMULA TO MAKE THOSE TYPE OF CALCULATIONS FOR USING THE CPS-II DATABASE?

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A. LACK OF EXERCISE, DIET, UNHEALTHY DIET RISK FACTOR, LACK OF SOCIAL SUPPORT, STRESS, HIGH BLOOD PRESSURE, OVERWEIGHT OR UNDERWEIGHT.
Q. AND DID YOU PREPARE A SERIES OF CHARTS THAT CAN BE USED TO ILLUSTRATE THESE ADDITIONAL RISKS, ATTRIBUTABLE RISKS?
MR. BROWN: MOVE TO STRIKE "ATTRIBUTABLE RISKS."
THE COURT: CAN YOU USE DIFFERENT LANGUAGE?
MR. FURR: OKAY, DR. WECKER. HAVE YOU PREPARED A SERIES OF CHARTS THAT CAN BE USED TO ILLUSTRATE THE ADDITIONAL CALCULATIONS YOU MADE ON THE CPS-II DATA SET USING THE LEVIN FORMULA?
A. YES, I DID.
Q. WOULD YOU STEP DOWN HERE AND USE THESE EXHIBITS TO EXPLAIN TO THE JURY THE ANALYSES THAT YOU MADE AND THE RESULTS THAT YOU FOUND.
A. I WILL.
MR. BROWN: WOULD YOU GIVE ME THE NUMBERS.
(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION DEFENDANTS' EXHIBIT # 6285)
MR. FURR: Q. LET ME ASK YOU TO BEGIN BY USING EXHIBIT 6285, TITLED "'ATTRIBUTABLE' DEATHS VERSUS ACTUAL DEATHS" AND EXPLAIN --
MR. BROWN: I'M GOING TO OBJECT TO THE PHRASE ON THAT, ON THE TOP.
MR. FURR: THIS IS VERY SUPERFICIAL.

4598

MR. BROWN: "ATTRIBUTABLE" APPEARS ON SEVERAL OF

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THESE. I OBJECT TO IT.
THERE'S THREE OF THEM THAT IT APPEARS ON.
THE COURT: CAN YOU CLARIFY WHAT THE WORD "ATTRIBUTABLE" MEANS WITH THE SERIES OF QUESTIONS?
MR. FURR: Q. DR. WECKER, WOULD YOU EXPLAIN WHAT THE WORD "ATTRIBUTABLE" MEANS ON THIS CHART AND --
MR. BROWN: I'M NOT COMFORTABLE WITH THAT QUESTION. MAYBE A LEADING QUESTION.
THE COURT: THAT'S FINE.
WHY DON'T YOU GO AHEAD AND ASK A LEADING QUESTION.
MR. FURR: Q. DR. WECKER, WE ARE GETTING HUNG UP ON THE WORD "ATTRIBUTABLE." AND LET'S BE CLEAR.
WHEN YOU USE THE WORD "ATTRIBUTABLE" IN THE CALCULATIONS THAT YOU'VE MADE, YOU DO NOT MEAN TO INFER, DO YOU, THAT ONE FACTOR IS CAUSING OR CAUSALLY RELATED TO THE OTHER FACTOR THAT'S BEING ANALYZED, DO YOU?
A. I DO NOT MEAN TO INFER THAT.
Q. AND DO YOU MEAN TO COMMUNICATE TO THE JURY THAT THE FACTORS THAT YOU ARE MAKING, THESE STATISTICAL COMPARISONS, ARE STATISTICALLY ASSOCIATED AS OPPOSED TO NECESSARILY CAUSALLY ASSOCIATED?
A. THAT'S CORRECT. THERE IS STATISTICAL ASSOCIATION, NOT NECESSARILY CAUSAL ASSOCIATION.
THE COURT: IT'S BEEN EXPLAINED NOW.
MR. BROWN: I DIDN'T OBJECT TO THAT.
THE COURT: ALL RIGHT. LET'S GO FORWARD.

4599

MR. FURR: Q. DR. WECKER, LET ME ASK YOU, BEGINNING WITH 6285, EXPLAIN TO THE JURY THE ADDITIONAL CALCULATIONS THAT YOU MADE ON THE CPS-II DATA SET USING THE LEVIN FORMULA.
A. OKAY. THIS IS THE FIRST SERIES OF THREE CHARTS THAT WILL ALL HAVE THE SAME TITLE "'ATTRIBUTABLE' DEATHS VERSUS ACTUAL DEATHS."
THE ACTUAL DEATHS (INDICATING) ARE THE ONES ON THIS FIRST CHART. AND THERE ARE COUNTED HERE 1,108,000 ACTUAL DEATHS.
NOW, THESE WERE THE DEATHS THAT WERE COUNTED UP AND REPORTED IN THE CENTER FOR DISEASE CONTROL REPORT, WHERE THE 420,000 ATTRIBUTABLE DEATHS WERE REPORTED.
Q. WHAT YEAR WAS THAT, DR. WECKER?
A. 19 -- THE DEATHS WERE IN 1990. THE REPORT WAS LATER, '96, I THINK.
Q. OKAY.
A. THESE AREN'T ALL THE DEATHS FROM 1990. THESE WERE THE ONES THEY COUNTED UP THAT WERE USED IN THEIR ANALYSIS.
SO THE AUTOMOBILE ACCIDENTS WERE NOT IN HERE, BUT THE DEATHS THAT THEY DID LOOK AT FOR DOING THE CALCULATION THAT ENDED UP WITH THE 420,000 ARE THESE DEATHS HERE, THESE 1.1 MILLION (INDICATING).
SO IT'S 420,000 OUT OF 1.1 MILLION THAT THEY REPORTED IN THAT ARTICLE.
Q. AND DID YOU DO A CALCULATION USING THE LEVIN FORMULA FOR LACK OF EXERCISE USING THE CPS-II DATA SET?

4600

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A. YES. AS THE TITLE SAYS, I'M GOING TO BE COMPARING THE ACTUAL 1 MILLION DEATHS TO A NUMBER OF WHAT ARE CALLED ATTRIBUTABLE DEATHS, WHERE "ATTRIBUTABLE DEATHS" MEANS EXACTLY THIS AND ONLY THIS. IT MEANS THE LEVIN FORMULA.

MR. FURR: LET ME ASK YOU TO USE WHAT WE MARKED AS 6286 TO EXPLAIN YOUR ANALYSIS OF LACK OF EXERCISE.

(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION DEFENDANTS' EXHIBIT # 6286)

THE WITNESS: OKAY. WHEN YOU APPLY THE LEVIN FORMULA TO THE RISK FACTOR LACK OF EXERCISE, WHICH IS STATISTICALLY ASSOCIATED, LACK OF EXERCISE WITH HIGHER MORTALITY, YOU GET THE RESULT WHICH IS WHAT STATISTICIANS CALL "ATTRIBUTABLE DEATHS" -- IT'S JUST THE NAME -- OF 567,000 ATTRIBUTABLE DEATHS.

IT DOESN'T MEAN CAUSAL. IT'S JUST A TERM THAT'S USED TO DESCRIBE THE RESULT OF THE LEVIN FORMULA. IT'S CALLED "'ATTRIBUTABLE' DEATHS."

Q. OKAY. HAVE YOU USED THE LEVIN FORMULA TO ANALYZE THE CPS-II DATA SET FOR OTHER FACTORS?

A. YES. I USED LACK OF EXERCISE, AND THEN I DID SOME OTHERS.

MR. FURR: LET ME ASK YOU TO USE 6287 TO DESCRIBE YOUR OTHER ANALYSES AND THE RESULTS.

(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX MARKED 4601 FOR IDENTIFICATION DEFENDANTS' EXHIBIT # 6287)

THE WITNESS: I ALSO LOOKED AT UNHEALTHY DIET, LACK OF VITAMINS, RICH FOODS, SO BASED ON THE DIET QUESTIONS IN THE QUESTIONNAIRE, USING THE LEVIN FORMULA EXACTLY THE SAME WAY THE CDC DID TO COME UP WITH THE 420,000, EXCEPT I DISTINGUISHED RISK FACTORS TO UNHEALTHY DIET.

I GET 758,000 WHAT ARE CALLED BY STATISTICIANS ATTRIBUTABLE DEATHS. IT DOESN'T MEAN CAUSE. IT'S JUST THE RESULT OF THE LEVIN FORMULA.

IT MEANS EXTRA DEATHS IN THAT GROUP, AS I EXPLAINED WITH THE LITTLE DOTS EARLIER.

Q. I TAKE IT YOU ALSO DID A SIMILAR CALCULATION USING THE LEVIN FORMULA FOR LACK OF SOCIAL SUPPORT OR STRESS?

A. YES.

Q. WHAT DID YOU FIND?

A. FOR LACK OF SOCIAL SUPPORT, WHICH IS A LARGE RECOGNIZED RISK FACTOR, THERE WERE 824,000 WHAT ARE CALLED ATTRIBUTABLE DEATHS. IT DOESN'T MEAN THEY'RE CAUSED. IT'S JUST THE RESULT OF THE LEVIN FORMULA, THE SAME WAY THE 420,000 IS A RESULT OF THE LEVIN FORMULA.

AND THEN I -- JUST TO SPEED ALONG HERE -- I DID HIGH BLOOD PRESSURE AND OVERWEIGHT-UNDERWEIGHT, FOR 170,000, 161,000.

Q. I TAKE IT YOU ADDED UP THE RESULTS OF YOUR

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LEVIN
27 FORMULA CALCULATIONS ON CPS-II?
28 A. YES.
4602
1 Q. AND YOU CAME UP WITH 2,480,000 ATTRIBUTABLE
2 DEATHS USING THAT -- USING THAT WORD AS YOU DEFINED IT FOR
3 US?
4 A. YES. AS IT'S DEFINED BY STATISTICIANS AND IN
THE
5 LITERATURE.
6 I ADDED UP THE ATTRIBUTABLE DEATHS AND GOT OVER
7 ABOUT TWO AND A HALF MILLION ATTRIBUTABLE DEATHS OUT OF
ONLY
8 1.1 MILLION ACTUAL DEATHS.
9 Q. AND BASED UPON THE ANALYSIS YOU DID OF
ADDITIONAL
10 LEVIN FORMULA CALCULATIONS ON CPS-II, DOES THAT AFFECT
YOUR
11 OPINION WITH RESPECT TO WHETHER OR NOT THE CPS-II DATA SET
12 SATISFIES THE CONDITION UNDER WHICH IT'S APPROPRIATE TO
USE
13 THE LEVIN FORMULA?
14 A. YES.
15 Q. AND WHAT IS YOUR OPINION?
16 A. MY OPINION IS THAT IT'S NOT APPROPRIATE TO USE
17 THE LEVIN FORMULA IN CONJUNCTION WITH THE CPS-II DATA
18 BECAUSE ANY ONE RISK FACTOR IS NOT ISOLATED.
19 SO WHEN YOU USE THE LEVIN FORMULA, YOU DON'T
JUST
20 GET THE EFFECT OF ONE THING. YOU GET KIND OF A BAG OF
21 DIFFERENT RISK FACTORS ALL TOGETHER.
22 SO LACK OF EXERCISE, 567,000 ATTRIBUTABLE
DEATHS,
23 DOESN'T MEAN THAT THE LACK OF EXERCISE ALONE CAUSED
567,000
24 DEATHS. IT DOESN'T MEAN THAT.
25 WHAT IT DOES MEAN IS PEOPLE WHO DON'T EXERCISE
26 HAVE A HIGHER DEATH RATE TO THIS AMOUNT.
27 Q. OKAY.
28 A. WHAT CAUSES IT IS NOT CLEAR, BUT IT'S CERTAINLY
4603
1 NOT THE ONE THING, LACK OF EXERCISE.
2 MR. FURR: WHY DON'T YOU HAVE A SEAT, PLEASE.
3 YOUR HONOR, I'M LOOKING FOR PLAINTIFFS' EXHIBIT
4 1804, WHICH WE USED EARLIER TODAY.
5 MR. BROWN: SORRY. I DIDN'T HEAR YOU.
6 MR. FURR: PLAINTIFFS' EXHIBIT 1804.
7 MR. BROWN: YOU WALKED THAT WAY WITH IT.
8 WHAT IS IT?
9 THE COURT: IS THAT THE DATA?
10 MR. BROWN: THE CDC CHART.
11 THE COURT: YES.
12 MR. FURR: YES. OKAY. THANKS.
13 COULD I HAVE THE LIGHTS, PLEASE.
14 THANKS, LUCY.
15 MS. CHABER: IT SHOULD BE NOTED THAT WE DID
NOT
16 TAKE IT.
17 THE COURT: OKAY. FOR THE RECORD, WHAT ARE
YOU
18 ABOUT TO SHOW?
19 MR. FURR: I'M ABOUT TO SHOW PLAINTIFFS'
EXHIBIT

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1804.
THE COURT: OKAY.
MR. FURR: Q. DR. WECKER, I SHOWED YOU THIS SLIDE EARLIER. DO YOU RECALL THAT?
A. YES.
Q. THIS 420,000 ANNUAL DEATHS FROM SMOKING THAT APPEARS ON THIS CDC CHART, THAT'S A NUMBER THAT'S CALCULATED USING THE LEVIN FORMULA, ISN'T IT?
A. YES.

4604

Q. IF YOU WERE TO PUT ON THIS CHART THE CALCULATIONS THAT YOU MADE USING THE LEVIN FORMULA ON THE SAME DATABASE FOR --
MR. BROWN: OBJECTION.
MR. FURR: Q. -- DIET AND LACK OF EXERCISE, WHAT WOULD YOUR NUMBER BE?
MR. BROWN: OBJECTION, YOUR HONOR.
THE COURT: THAT CALLS FOR A MEDICAL OPINION.
MR. BROWN: ABSOLUTELY.
THE COURT: IT DOES. SUSTAINED.
MR. FURR: OKAY. LIGHTS.
THANK YOU, DR. WECKER. THAT'S ALL I HAVE, YOUR HONOR.
THE COURT: OKAY. MR. BROWN.
I ASSUME NO OTHER DEFENSE COUNSEL HAVE ANY QUESTIONS?
MR. HARDY: NO, YOUR HONOR.

CROSS-EXAMINATION

BY MR. BROWN: Q. WHEN STATISTICIANS TAKE DATA AND THEY PUT DOWN ASSOCIATIONS OF CERTAIN FACTORS WITH CERTAIN CONDITIONS OR OTHER FACTORS, THEY ARE MERELY DOING THAT FOR THE PURPOSE OF LETTING OTHER PROFESSIONALS DECIDE WHAT IT MEANS, FOR EXAMPLE.
WOULD YOU AGREE WITH THAT?
A. NO. NO. I CAN EXPLAIN BRIEFLY, IF YOU LIKE, WHY I CAN'T AGREE WITH THAT.
Q. LET ME ASK ANOTHER QUESTION. LET ME GIVE YOU AN

4605

EXAMPLE.
YOU HAVE A LARGE TRUCK THAT'S FILLED WITH DIFFERENT KINDS OF CATTLE, DAIRY COWS, SOME SEMENTALS, SOME WHITE-FACED CATTLE. THERE'S ABOUT 100 OF THEM IN THIS TRUCK.
THIS TRUCK GOES OVER THE CLIFF AND 70 OF THEM ARE KILLED, AND IT TURNS OUT TO BE ALL WHITE-FACED CATTLE. THE SEMENTHALS ARE THERE. THEY'RE HURT, BUT THEY'RE ALIVE. THE DAIRY CATTLE ARE ALIVE.
BUT WHAT A STATISTICIAN WOULD BE DOING, WHAT YOU HAVE BEEN DOING HERE IN COURT IS TELLING US THAT, IN THAT TRUCK, THERE WAS THIS BUNCH OF CATTLE, AND STATISTICALLY, OF THE DEATHS, THEY ALL HAPPENED TO BE 100 PERCENT

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WHITE-FACED
CATTLE, AND THEN YOU'D BREAK DOWN THE REST AS TO WHO WAS ALIVE. THAT WOULD BE AN EXAMPLE OF WHAT YOU HAVE DONE HERE, ISN'T IT?

A. I DON'T SEE THIS CONNECTION. MAYBE WE COULD STUDY WHAT CAUSED THE TRUCK TO GO OFF THE CLIFF. MAYBE THEY WERE RIDING IN THE FRONT AND THE TRUCK HIT THE FRONT END.

Q. THAT'S FAIR. YOU STARTED OFF STATISTICALLY TO SAY, OF THE DEAD CATTLE, 70 OF THEM WERE WHITE-FACED?

A. THAT WOULD BE A FACT.

Q. A STATISTICAL FACT?

A. YES.

Q. IT WOULD BE AN ASSOCIATION -- WE WOULD KNOW THEN THAT OF THE DEAD CATTLE, 70 OF THOSE CATTLE THAT DIED -- IN FACT, 100 PERCENT OF THE DEAD WERE THE WHITE-FACED CATTLE, BUT IT WOULDN'T TELL US BY ITSELF WHY THEY DIED, WOULD IT?

4606

A. NO. THAT DOESN'T TELL YOU WHY THEY DIED UNTIL YOU INVESTIGATE FURTHER.

Q. FOR THAT PUTTING INTO THE CONTEXT, AFTER WHAT WE HAVE BEEN DOING TODAY, YOU NEED A MEDICAL DOCTOR TO LOOK AT -- OR A SCIENTIST TO LOOK IT AND DECIDE WHY DID THOSE CATTLE DIE?

A. LIKE AN AUTOPSY?

Q. YES. THAT WOULD BE A GOOD WAY TO DO IT.

A. I AGREE WITH THAT.

Q. MAYBE FIVE OF THOSE CATTLE WERE ALREADY DEAD IN THE TRUCK FROM SOME DISEASE. MAYBE THEY WERE KEPT AT TOO HIGH AN ALTITUDE AND THEY DEVELOPED CONGESTIVE HEART FAILURE. WHITE-FACED CATTLE DO THAT, YOU KNOW.
ARE YOU AWARE OF THAT?

A. I'M HAPPY TO ASSUME IT.

Q. ALL RIGHT. ENOUGH. LET ME GO ON TO SOME OTHER QUESTIONS.
SOME SMART KID ONCE TOLD ME -- I THINK IT WAS ONE OF MINE -- THAT HE'D LEARNED IN COLLEGE THAT ASSOCIATION OR CORRELATION, I THINK HE USED, BUT ASSOCIATION -- CORRELATION DOES NOT EQUAL CAUSATION. THAT'S WHAT HE TOLD ME.
WOULD YOU AGREE WITH THAT?

A. ABSOLUTELY. HE TOLD YOU THAT RIGHT.

Q. I TOLD YOU HE WAS A SMART KID. OKAY.
LET ME ASK YOU SOME QUESTIONS ABOUT WHAT YOUR BACKGROUND HAS BEEN, AND WE CAN JUST GO THROUGH THIS RAPIDLY, I THINK.
YOU'VE SAID SOME OF THIS ON DIRECT ALREADY. I

4607

WILL TRY TO SHORTCUT IT AND NOT TO MAKE IT TOO LONG HERE.
YOUR TRAINING, YOUR EXPERIENCE, YOUR EXPERTISE DOES NOT FALL INTO MEDICAL SCIENCE. YOU ARE NOT A QUALIFIED EXPERT IN MEDICAL SCIENCE?

A. THAT'S TRUE, EXCEPT TO THE EXTENT THAT STATISTICAL SCIENCE MAKES CONTRIBUTIONS TO MEDICAL SCIENCE.
BUT I MAKE NO PRETENSE TO BE A MEDICAL DOCTOR.

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Q. AND CONTRIBUTIONS TO MEDICAL SCIENCE COME FROM A LOT OF DIFFERENT PEOPLE.

BUT IN TERMS OF LOOKING AT THE POPULATION AND DECIDING WHAT CAUSED THE DEATHS IN THAT POPULATION, THAT'S WHAT EPIDEMIOLOGISTS DO; ISN'T THAT RIGHT?

A. IF THEY ARE DOING IT FULL TIME, THEY ARE STATISTICIANS.

STATISTICIANS WHO WORK FULL TIME ON HUMAN HEALTH CALL THEMSELVES EPIDEMIOLOGISTS, YES.

Q. ON AN EPIDEMIOLOGICAL TEAM DOING AN EPIDEMIOLOGICAL STUDY -- LET ME STOP RIGHT THERE.

HAVE YOU EVER BEEN ON ONE OF THESE TEAMS?

A. SURE. I HAVE STUDIED ISSUES OF HUMAN HEALTH --

Q. NO. NO.

A. -- WITH NTH.

Q. HAVE YOU EVER BEEN ON A TEAM THAT CONSISTS OF EPIDEMIOLOGISTS WHO WERE IN CHARGE OF REACHING THE RESULTS, BUT THEY HAD STATISTICIANS THAT GAVE THEM HELP WHERE THEY WANT STATISTICAL HELP?

A. I HAVE BEEN ON SUCH TEAMS, BUT I WAS THE STATISTICIAN. EPIDEMIOLOGISTS ARE THE SAME GUY.

4608

SO I HAVE BEEN ON SUCH TEAMS. YOU CAN CALL IT THE STATISTICIAN OR THE EPIDEMIOLOGIST --

Q. YOU ARE NOT AN EPIDEMIOLOGIST?

MR. FURR: EXCUSE ME, YOUR HONOR.

I THINK THE WITNESS SHOULD BE ALLOWED TO FINISH HIS ANSWER.

THE COURT: I AGREE.

HAVE YOU FINISHED YOUR ANSWER?

THE WITNESS: WE CAN START AGAIN.

MR. BROWN: Q. DO YOU HAVE A DEGREE IN EPIDEMIOLOGY?

A. NO. I'M A STATISTICIAN.

Q. HAVE YOU EVER PUBLISHED IN A PEER-REVIEW JOURNAL AN EPIDEMIOLOGICAL STUDY RESULT?

A. WELL, I THINK SO. I RECALL MY STUDY ON "CORRECTING FOR OMITTED-VARIABLES AND MEASUREMENT-ERROR BIAS IN REGRESSION WITH AN APPLICATION TO THE EFFECT OF LEAD ON IQ."

LEAD IS AN ELEMENT THAT IS BAD FOR YOU, IF YOU EAT TOO MUCH, AND THERE'S STATISTICAL DATA SUGGESTING IT MIGHT ACTUALLY LOWER IQ IN CHILDREN WHO EAT TOO MUCH OF IT, LIKE FROM LEAD PAINT.

AND I DEVELOPED A METHODOLOGY FOR ASSESSING THOSE KINDS OF SITUATIONS.

MR. BROWN: Q. WHEN YOU HAVE CONFOUNDING VARIABLES, THEN EPIDEMIOLOGISTS TRADITIONALLY AND TYPICALLY ADJUST FOR THOSE CONFOUNDING VARIABLES, DON'T THEY?

A. THEY WOULD, IF THEY COULD, BUT USUALLY CAN'T. SO

4609

YOU DESIGN AN EXPERIMENT TO GET AROUND THAT PROBLEM.

Q. WHEN YOU HAVE, FOR EXAMPLE, SMOKERS WHO ARE ALSO

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INSULATION WORKERS, INSULATING WITH ASBESTOS --
A. YES.
Q. -- THEN YOU HAVE CONFOUNDING VARIABLES, DON'T YOU?
YOU HAVE VERY HEAVY ASBESTOS EXPOSURE AND YOU HAVE, IN SOME CASES, VERY HEAVY SMOKING HISTORIES; CORRECT?
A. YES.
Q. THAT'S BEEN STUDIED, HASN'T IT?
A. YES.
Q. THAT WAS STUDIED BY ONE OF THE WORLD'S LEADING EPIDEMIOLOGISTS AND SCIENTISTS IN THE FIELD OF ASBESTOS; CORRECT?
A. IT'S BEEN STUDIED BY MANY PEOPLE. I DON'T KNOW WHO YOU HAVE IN MIND.
Q. DOES DR. SELIKOFF RING ANY BELLS?
A. YES. I READ THAT.
Q. SELIKOFF DID A STUDY OVER MANY YEARS AND OVER THOUSANDS OF INSULATORS?
A. I RECALL IT'S A LARGE SAMPLE.
Q. VERY LARGE.
AND HE ADJUSTED IN THAT STUDY FOR SMOKING, DID HE NOT?
A. YES, HE MADE SMOKING ADJUSTMENTS.
Q. AND HE CAME TO THE CONCLUSION, HE AND HIS TEAM OF EPIDEMIOLOGISTS -- HE'S AN EPIDEMIOLOGIST -- SCIENTISTS OF ALL KINDS, HIS TEAM CAME TO A CONCLUSION THAT THEY HAD

4610

PROPERLY ADJUSTED OUT SMOKING FROM ASBESTOS EXPOSURE, AND THEY APPLIED A RELATIVE RISK TO BOTH CAUSATIONS, DIDN'T THEY?
MR. FURR: OBJECTION, YOUR HONOR. CALLS FOR HEARSAY.
THE COURT: SUSTAINED.
MR. BROWN: THIS IS CROSS-EXAMINATION.
THE COURT: IT'S HEARSAY.
MR. BROWN: Q. DO YOU BELIEVE THAT THE SELIKOFF STUDY OF INSULATORS, WHICH IS THE ONE WE HAVE JUST BEEN REFERRING TO, IS A RELIABLE AUTHORITY?
A. IT'S BEEN A LONG TIME SINCE I HAVE LOOKED AT IT.
IF YOU HAD A COPY HERE AND WE HAD A BREAK, I COULD GET YOU AN ANSWER TO THAT.
Q. LET ME ASK YOU THIS QUESTION.
A. I DON'T REMEMBER IT THAT WELL.
Q. DO YOU HAVE ANY QUESTION IN YOUR MIND THAT DR. SELIKOFF AND HIS TEAM THAT LOOKED AT SMOKING AND ASBESTOS EXPOSURE AND MADE CERTAIN CONCLUSIONS WERE NOT RELIABLE AUTHORITIES?
MR. ROSSE: I OBJECT. BEYOND THE SCOPE OF DIRECT.
THE COURT: WELL, I DON'T THINK IT'S BEYOND THE SCOPE OF DIRECT. BUT I DON'T THINK IT'S REALLY RELEVANT WHETHER HE HAS ANY QUESTION IN HIS MIND ON THAT SUBJECT OR NOT, BECAUSE THAT ISN'T THE LEGAL TEST THAT APPLIES HERE.
BUT IF THE OBJECTION IS JUST BEYOND THE SCOPE, I WOULD OVERRULE THAT. BUT I DON'T THINK THE ANSWER TO THIS

4611

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QUESTION IS PERTINENT TO WHAT I UNDERSTAND TO BE THE PURPOSE
OF THE QUESTION.
BUT YOU CAN GO AHEAD AND ASK IT, BECAUSE THERE IS
NO OBJECTION ABOUT RELEVANCE YET.
SO YOU CAN GO AHEAD.
MR. BROWN: Q. YOU CAN ANSWER.
A. IT'S BEEN YEARS SINCE I HAVE READ THE SELIKOFF
ARTICLES. AND SO I'D LIKE TO TAKE A LOOK AT THEM. IF YOU
HAVE THEM WITH YOU, AND WE HAVE A BREAK, I COULD TELL YOU IN
A FEW MINUTES IF I -- WHAT MY POSITION IS ON THEM.
Q. LET ME ASK YOU THIS: HAVE YOU EVER ARRIVED AT
THE OPINION THAT SOMETHING ABOUT THE WAY DR. SELIKOFF AND
HIS PEOPLE WORKED AND DEVELOPED THEIR INFORMATION AND THE
CONCLUSIONS THEY REACHED IN STUDYING THOSE INSULATORS AND
SMOKERS WITHIN THE INSULATORS WAS FLAWED?
A. IF YOU ACCEPT AN ANSWER THAT'S SORT OF A BEST
EFFORT, BASED ON A VAGUE RECOLLECTION, I CAN ANSWER, BUT I
HAVEN'T LOOKED AT THOSE PAPERS IN A LONG TIME.
IF YOU WILL UNDERSTAND THAT'S THE NATURE OF MY
ANSWER, I'LL TRY TO ANSWER IT.
THE COURT: WELL, THE LEGAL LINE HERE IS THAT
YOU'RE NOT PERMITTED TO GUESS. BUT IF YOU HAVE A REASONABLE
RECOLLECTION, YOU CAN GIVE US YOUR RECOLLECTION.
THE QUESTION IS WHETHER YOU ARE GUESSING OR
WHETHER YOU'RE TESTIFYING FROM RECOLLECTION.
MR. BROWN: Q. WHAT I ASKED PROBABLY DOESN'T
CALL FOR A GUESS.
I ASKED FOR -- HAVE YOU EVER FORMED AN OPINION
4612
THAT THAT SELIKOFF STUDY ON THOSE INSULATORS WAS FLAWED?
MR. ROSSE: YOUR HONOR, I WOULD HAVE A RELEVANCE
OBJECTION. I RENEW MY BEYOND THE SCOPE ALSO.
THE COURT: I'LL ALLOW HIM TO ANSWER.
THE WITNESS: IT'S BEEN A LONG TIME. I CAN
THINK OF ONE OPINION THAT I THINK I FORMED WHEN I LOOKED AT
THAT MATERIAL A FEW YEARS AGO.
MR. BROWN: Q. AND YOU ARRIVED AT AN OPINION,
DID YOU, THAT DR. SELIKOFF'S INSULATION -- INSULATOR STUDY
WAS A FLAWED STUDY?
A. I DIDN'T THINK OF IT IN QUITE THOSE STARK TERMS,
BUT I THINK IT'S FAIR TO CALL IT FLAWED, YES.
Q. ARE YOU FAMILIAR WITH DR. DOLL'S STUDY OF SMOKING
AS RELATED TO LUNG CANCER DONE IN THE EARLY 1950S?
A. YOU MEAN THE DOCTOR STUDY?
Q. I'M TALKING ABOUT SIR RICHARD DOLL.
A. HE'S DONE A LOT OF WORK. ON THE BRITISH
DOCTORS?
Q. THAT WOULD BE FINE.
A. MAYBE YOU SHOULD --
Q. NO. I SAID THAT WOULD BE FINE.
A. I DON'T KNOW WHAT YOU ARE TALKING ABOUT.
Q. THE BRITISH DOCTORS WOULD BE ALL RIGHT.
A. OKAY.
Q. ARE YOU FAMILIAR WITH THAT?

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A. YES. YES.
Q. DO YOU THINK DR. DOLL'S STUDY OF THE BRITISH DOCTORS, TRYING TO DETERMINE WHETHER LUNG CANCER -- EXCUSE ME -- WHETHER SMOKING WAS A MAJOR CAUSE OF LUNG CANCER IS FLAWED IN SOME WAY?
MR. FURR: EXCUSE ME, YOUR HONOR. THIS IS NOT AN OBJECTION, BUT I WANT TO PRESERVE THIS OPENING THE DOOR TO THE TESTIMONY THAT I TRIED TO ELICIT.
THE COURT: HE DIDN'T TESTIFY ABOUT CAUSE, SO HE'S SAYING YOU CAN ASK HIM THIS QUESTION, BUT IF YOU DO, THEN HE RESERVES THE RIGHT TO ASK HIM ABOUT CAUSE.
SO YOUR QUESTION TO HIM --
MR. BROWN: I'M ASKING ABOUT DR. DOLL.
THE COURT: -- IT GOES BEYOND THE SCOPE OF WHAT HE TESTIFIED ABOUT, BECAUSE HE DID NOT PURPORT TO TESTIFY ABOUT CAUSE.
MR. BROWN: ALL RIGHT.
THE COURT: BUT HE'S NOT MAKING THE OBJECTION. HE'S JUST SAYING THAT IF YOU ASK HIM THAT QUESTION, THEN HE RESERVES THE RIGHT TO GO INTO CAUSE AS WELL.
BUT HE'S STAYED WAY FROM CAUSE OVER YOUR OBJECTION. WITH YOUR OBJECTION, HE STAYED AWAY FROM IT. AND I RULED IN YOUR FAVOR ON THAT.
MR. BROWN: MY OLD PARTNER FRANK FINNEY USED TO SAY "I'M FEARLESS, BUT THAT TERRORIZES ME."
THE COURT: OKAY.
MR. BROWN: OKAY.
Q. WAS DR. DOLL'S STUDY STATISTICALLY FLAWED?
A. YES. I COULD POINT OUT WEAKNESSES THAT ARE FAIR -- I BELIEVE IT'S FAIR TO CALL A FLAW, YES.
Q. LET ME ASK YOU ABOUT SOME OTHER STUDIES.

4614

ARE YOU FAMILIAR WITH THE HAMMOND STUDY IN 1996 IN WHICH HE STUDIED THE AMERICAN CANCER SOCIETY CPS-I DATA?
A. I DON'T REMEMBER A '96 HAMMOND STUDY. I RECALL AN EARLIER HAMMOND STUDY.
ARE YOU SURE YOU HAVE THE DATE RIGHT?
Q. I THINK SO.
LET'S TALK ABOUT THE EARLIER STUDY.
YOU ARE FAMILIAR WITH THE HAMMOND STUDY THAT LINKED SMOKING WITH LUNG CANCER?
A. IF BY "LINK" YOU MEAN ASSOCIATION, YES.
Q. WELL, I WON'T ARGUE WITH YOU ABOUT WHAT IT FOUND.
BUT I WILL ASK YOU THIS: IN YOUR OPINION, WAS THE HAMMOND STUDY -- ANY OF THE HAMMOND STUDIES YOU'RE FAMILIAR WITH STATISTICALLY FLAWED?
MR. FURR: OBJECTION, YOUR HONOR. VAGUE, UNLESS HE IDENTIFIES THE STUDY.
THE COURT: SUSTAINED.
MR. BROWN: DID YOU SUSTAIN IT?
THE COURT: YES, BECAUSE I DON'T KNOW WHAT STUDY WE ARE TALKING ABOUT.
MR. BROWN: Q. ALL RIGHT. IF YOU ARE NOT SURE ABOUT THE STUDY, WE HAVE TO MOVE ON.

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THE HAMMOND 1966 POPULATION STUDY, ACS CPS-I?
A. I KNOW THAT ONE. YOU SAID 1996.
Q. DID I?
A. YES. I SAID I DIDN'T KNOW THE 1996, BUT I KNOW THE EARLIER ONE.

4615

Q. I DO THAT. I DO THAT FROM TIME TO TIME. I'M SORRY. 1966.
WAS THAT STUDY STATISTICALLY FLAWED, IN YOUR OPINION?
A. YES. AND IF YOU WANT, I'LL TRY TO EXPLAIN WHAT SOME OF THE PROBLEMS WERE.
Q. I'LL JUST MOVE ON AND FIND OUT HOW MANY STUDIES YOU THINK ARE FLAWED.
HOW ABOUT THE KAHN, K-A-H-N, STUDY, 1966, WHICH STUDIED U.S. VETERANS; ARE YOU FAMILIAR WITH THAT STUDY?
A. I HAVE READ IT. IT'S BEEN A WHILE.
Q. DID YOU COME TO A CONCLUSION THAT STATISTICALLY THAT WAS A FLAWED STUDY?
A. I DON'T HAVE A SHARP RECOLLECTION, BUT I HAVE ENOUGH RECOLLECTION TO BELIEVE THAT IT WOULD HAVE SUFFERED FROM THE SAME KIND OF CONFOUNDING PROBLEMS THAT I DESCRIBED HERE TODAY.
Q. OKAY. HOW ABOUT A STUDY BY THE CANADIAN DEPARTMENT OF NATIONAL HEALTH AND WELFARE OF CANADIAN MALES, AND THAT TOOK PLACE IN 1966; ARE YOU FAMILIAR WITH THAT STUDY?
A. THAT ONE DOESN'T RING A BELL.
Q. ALL RIGHT. HOW ABOUT AN AUTHOR NAMED CEDERLOF AND OTHERS, A 1975 POPULATION STUDY OF MALES AND FEMALES IN TWO SUBGROUPS REGARDING SMOKING AND LUNG CANCER?
A. I DON'T RECOGNIZE IT FROM WHAT YOU SAY.
Q. DOLL AND PETO, 1976, P-E-T-O, BRITISH MALE PHYSICIANS?

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A. THAT'S THE ONE I WAS TALKING ABOUT EARLIER.
Q. OKAY. I WAS REFERRING TO ONE IN THE '50S.
A. WE GOT MIXED UP.
Q. LET'S GO BACK THEN TO THE -- YOU THOUGHT YOU WERE TALKING ABOUT THE 1976 STUDY.
LET ME TAKE YOU BACK TO THAT ONE IN THE '50S WHERE DOLL DID A STUDY ON THE LUNG CANCER BEING CAUSED BY SMOKING.
DID YOU HAVE ANY -- EVER FORM AN OPINION THAT THAT STUDY BY SIR RICHARD DOLL WAS FLAWED STATISTICALLY?
A. I REMEMBER -- I DON'T REMEMBER SPECIFICALLY, BECAUSE IT'S BEEN A LONG TIME SINCE I HAVE READ THAT.
BUT MY MEMORY IS SHARP ENOUGH TO SAY THAT THERE WERE A LOT OF PEOPLE WHO POINTED OUT CONCERNS ON THOSE EARLY 1950 STUDIES, SERIOUS PROBLEMS.
Q. LET'S MOVE UP TO DOLL AND PETO, 1976, BRITISH MALE PHYSICIANS.
DID YOU HAVE -- ARE YOU FAMILIAR WITH THAT ONE? I THINK YOU SAID YOU WERE.
A. YES. IN FACT, WE DISCUSSED THAT ONE.
Q. IS THAT ONE YOU THOUGHT WAS FLAWED STATISTICALLY?
A. IT SUFFERS FROM SOME OF THE SAME PROBLEMS I

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DISCUSSED HERE TODAY, YES.
Q. ALL RIGHT. DOLL AND SOME OTHERS DID A STUDY IN 1980 ON BRITISH FEMALE PHYSICIANS.
ARE YOU FAMILIAR WITH THAT ONE?
A. WHAT YEAR?
Q. 1980.

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A. I THINK I'VE SEEN THAT.
Q. HAVE YOU FORMED AN OPINION AS TO WHETHER THAT STUDY WAS STATISTICALLY FLAWED?
A. I DON'T REMEMBER THAT ONE WELL ENOUGH.
Q. ALL RIGHT.
A. BUT IF CAUSE WAS A CONCLUSION, THEN I WOULD POINT OUT A FLAW. IF ASSOCIATION WAS THE CONCLUSION, THEN IT MAY BY OKAY.
Q. I'M SORRY?
A. THE FLAW IS NOT THE STUDY. IT'S WHAT YOU CONCLUDE, PERHAPS ERRONEOUSLY, FROM THE STUDY.
IF THE CONCLUSION WAS THERE WAS AN ASSOCIATION OF, SAY, SMOKING WITH HIGHER MORTALITY, THAT'S JUST A FACT. I OBSERVED IT MYSELF.
BUT THE FLAW COMES IN WHEN YOU GET AN OVERREACHING INTERPRETATION OR CONCLUSION IN THE ARTICLE THAT EITHER TRIES TO CLAIM ITS CAUSE OR TRIES TO SAY THAT THE EXCESS OF DEATHS IS ONE THING ONLY AND NOT A COMBINATION.
Q. ARE YOU SAYING THAT IF A STUDY IS STATISTICALLY FLAWED, THEN THE CONCLUSIONS THAT THE AUTHORS OR CONDUCTORS OF THE STUDIES MAKE WITH REGARD TO FINDING CAUSATION IS ALSO FLAWED?
A. ANY --
MR. FURR: NO OBJECTION TO THE QUESTION, BUT I WANT TO BE CLEAR AS TO THE DOOR BEING OPENED BY THIS QUESTION.
MR. BROWN: THAT'S NOT TRUE.

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I'M TALKING --
THE COURT: I'M NOT GOING TO RULE WHETHER IT'S TRUE OR NOT. I'M GOING TO LET YOU ASK THE QUESTION. I WILL DETERMINE WHETHER IT OPENS THE DOOR OR NOT LATER.
HE'S JUST TELLING YOU HE'S GOING TO MAKE THAT CLAIM. I DON'T HAVE AN OCCASION TO MAKE ANY RULINGS RIGHT NOW, BECAUSE THERE IS NO OBJECTION.
SO YOU GO AHEAD, IF YOU WISH TO.
MR. BROWN: LET ME ASK THIS QUESTION. I WILL WITHDRAW THE OTHER ONE.
Q. YOU'RE NOT QUALIFIED TO GIVE US CAUSATION ON ANY ASPECT WHATSOEVER OF LUNG CANCER, ARE YOU?
A. EXCEPT ONE ASPECT THAT I'D BE GLAD TO CLARIFY WITH YOU, IF YOU LIKE.
Q. HAVEN'T YOU TESTIFIED TODAY IN THIS COURT THAT WHEN YOU CAME IN HERE, YOU DIDN'T INTEND TO TESTIFY AS TO CAUSATION?
A. WHAT I HOPE I SAID WAS THIS: THAT I HAD NO OPINION AS TO WHETHER ANY RISK FACTOR CAUSED ANY DISEASE OR

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DEATH. THAT WAS TRUE THEN AND IS TRUE NOW.
BUT AS A STATISTICIAN, I KNOW WHETHER IT'S PROPER
TO REACH CAUSAL CONCLUSIONS. I KNOW THE SAME THING YOUR SON
KNOWS, THAT CORRELATION IS NOT CAUSATION. I KNOW THAT.
Q. ALL RIGHT. LET ME GO BACK TO THESE STUDIES.
HOW ABOUT --
THE COURT: IN FIVE, TEN MINUTES, JUDITH IS
GOING TO NEED A RECESS.
MR. BROWN: WE COULD STOP RIGHT HERE.
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THE COURT: YOU WANT TO STOP RIGHT HERE?
MR. BROWN: THIS IS FINE.
THE COURT: THIS HAS BEEN A RATHER LONG
SEGMENT. LET'S GO FOR A LITTLE OVER 20 MINUTES, TO QUARTER
TO 4:00.
PLEASE CONTINUE TO FOLLOW THE ADMONITION. WE'LL
SEE YOU BACK AT QUARTER TO 4:00.
(RECESS TAKEN FROM 3:20 TO 3:48 P.M.)
THE COURT: I THINK EVERYBODY IS HERE, AND WE
ARE READY TO GO, MR. BROWN.
MR. BROWN: I'M JUST ABOUT THROUGH.
Q. PRELIMINARY TO MY QUESTION, I JUST WOULD ASK YOU
THIS: YOU HAVE CRITICIZED HERE, IN DIRECT AND ON
CROSS-EXAMINATION, THE CPS-II, THE CDC, THE DOLL STUDIES,
SELIKOFF AND SOME OTHERS.
AND WHAT I'D LIKE TO ASK YOU IS THIS: HAVE YOU
EVER PUBLISHED YOUR CALCULATIONS UPON WHICH YOUR CRITICISMS
ARE BASED IN ANY SCIENTIFIC JOURNALS IN WHICH YOU WERE
SUBJECTED TO PEER REVIEW, OR HAVE YOU JUST PRESENTED THIS
THEORY OF YOURS IN COURTROOMS LIKE THIS ONE?
A. THE BASIC IDEA OF CONFOUNDING IS TO BE FOUND IN
NUMEROUS ARTICLES OF MINE.
IF YOUR QUESTION IS FOCUSED ON A PARTICULAR
EXHIBIT THAT I HAD HERE TODAY, THAT HAS NOT EVER BEEN
SUBMITTED TO A JURY, BECAUSE IT'S NOT APPROPRIATE STUFF FOR
A JURY.
I'M AN EDITOR, I KNOW THAT, BUT I HAVE SUBMITTED
IT TO LAWYERS, WHO HAVE THE OPPORTUNITY TO REVIEW IT AND
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TELL ME IF THEY THINK IT'S WRONG.
Q. YOU KNOW WHAT A PEER-REVIEW ARTICLE IS, DON'T
YOU, DOCTOR?
A. SURE.
Q. YOU KNOW THAT WHEN YOU WRITE AN ARTICLE FOR A
PEER-REVIEW JOURNAL, THAT SOME VERY CAPABLE PEOPLE LOOK AT
IT TO DETERMINE WHETHER THE PROPOSED ARTICLE HAS MERIT? YOU
KNOW THAT?
A. YES.
Q. NOW, THE QUESTION IS: HAVE YOU EVER SUBMITTED
FOR PUBLICATION TO A PEER-REVIEW JOURNAL AN ARTICLE OR A
PAPER WHICH CRITICIZES ANY OR ALL OF THESE STUDIES THAT I
HAVE MENTIONED AND YOU'VE TESTIFIED ABOUT IN WHICH YOU LAID
OUT YOUR CALCULATIONS AND WHY THESE STUDIES WERE FLAWED?

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A. I'M THINKING, SO I CAN BE RESPONSIVE. I KNOW THAT'S MY OBLIGATION HERE, BUT THE QUESTION HAS NOT A LOT OF PIECES TO IT.

I HAVE LAID OUT IN A PUBLICATION THE PRINCIPLES THAT I HAVE DISCUSSED TODAY, BUT I HAVE NOT PUT IN A PUBLICATION THE PARTICULAR NUMBERS THAT ILLUSTRATE THE PRINCIPLES THAT WE HAVE USED TODAY.

AND IF I GOT -- IF I GOT THOSE AS AN EDITOR, I WOULDN'T PUBLISH THEM, BECAUSE THAT'S NOT THE STUFF OF A SCIENTIFIC ARTICLE.

Q. WOULD YOU CONCEDE THAT THE SOURCES OF INFORMATION THAT YOU HAVE CRITICIZED HERE ARE VERY IMPORTANT IN THE LITERATURE, FROM A STANDPOINT OF STATISTICS AND OTHERWISE?

A. YES, THEY'RE IMPORTANT, AND THEY'RE ACTUALLY WELL

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UNDERSTOOD.

THAT'S WHY THEY WOULDN'T GET PUBLISHED. THEY'RE PRETTY WELL UNDERSTOOD.

Q. RECOGNIZING IN THEORY -- IS IT YOUR TESTIMONY THAT YOU HAVE NEVER PREPARED A PAPER WHICH PRESENTS THE SAME CRITICISM YOU PROVIDED HERE TO A PEER-REVIEW PROCESS FOR PUBLICATION AND THEN GOT PUBLISHED IN A PEER-REVIEW JOURNAL?

A. THAT'S RIGHT. I HAVEN'T DONE THAT.

I PRESENTED THIS AS COURTROOM MATERIAL, AND I PRESENTED IT TO YOU AND YOUR EXPERTS TO TAKE A LOOK AT, BUT NOT A PEER-REVIEW JOURNAL.

MR. BROWN: DOCTOR, THANK YOU.

THE WITNESS: THANK YOU.

THE COURT: ANYTHING FURTHER?

MR. FURR: YES, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. FURR: Q. DR. WECKER, I'M NOT GOING TO ASK YOU TO HELP ME SOLVE THE MYSTERY OF THE DEATH OF THE COWS OVER THE CLIFF, BUT I DO WANT TO ASK YOU ANOTHER QUESTION ABOUT PLAINTIFFS' EXHIBIT 1804.

THIS NUMBER FOR SMOKING ATTRIBUTABLE MORTALITY, THAT'S A NUMBER THAT WAS CALCULATED USING THE LEVIN FORMULA?

A. YES.

Q. IS THAT A NUMBER THAT IS BASED UPON AN AUTOPSY INVESTIGATION OF THE INDIVIDUALS INVOLVED IN THE STUDY?

MR. BROWN: THIS GOES BEYOND THE SCOPE, YOUR HONOR. I OBJECT TO THAT.

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HE COVERED THIS ON DIRECT. I DIDN'T COVER IT AT ALL.

THE COURT: I THOUGHT THERE WAS AN OBJECTION THAT WE DIDN'T GET INTO IT.

MR. FURR: NO, YOUR HONOR.

THE COURT: IS THAT A DIFFERENT ONE?

MR. FURR: THIS IS THE LAST QUESTION.

THE COURT: I THOUGHT YOU OBJECTED TO IT.

MR. FURR: NO.

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MR. BROWN: I OBJECTED TO THAT SHOWING CAUSATION, AND THAT WAS THE END OF IT. NEVER ASKED.
THE COURT: I THINK MR. BROWN HAD OBJECTED TO THE LAST QUESTION YOU WERE GOING TO ASK HIM ABOUT THIS, AND I SUSTAINED THAT. RIGHT?
MR. FURR: NO, YOUR HONOR. I DON'T WANT TO ARGUE IN FRONT OF JURY.
THIS IS MY LAST QUESTION. I CAN EXPLAIN IT VERY QUICKLY.
THE COURT: GO AHEAD. ASK IT AGAIN.
MR. BROWN: THE LAST QUESTION EXCEPTION.
THE COURT: IT'S GOING TO BE VERY EFFECTIVE.
MR. FURR: I HAVE LEARNED THE LAST QUESTION EXCEPTION WHILE I HAVE BEEN IN CALIFORNIA.
THE COURT: YOU CAN ASK IT AGAIN. SEE IF THERE IS AN OBJECTION.
MR. FURR: Q. WAS THIS NUMBER BASED UPON AN INVESTIGATION OF AUTOPSY REPORTS?
A. NO.

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MR. BROWN: OBJECTION.
THE WITNESS: NO.
MR. BROWN: FOUNDATION, AND BEYOND THE SCOPE OF THE CROSS-EXAMINATION.
THE COURT: BEYOND THE SCOPE. GIVEN THIS ONE QUESTION, I'M GOING TO OVERRULE THAT. HE'S SAYING IT LACKS FOUNDATION.
I'LL LEAVE THE ANSWER IN. BUT ASK HIM HOW HE KNOWS, AND THEN I'LL EITHER LEAVE IT IN OR NOT, DEPENDING ON WHAT HIS ANSWER IS.
MR. FURR: Q. DR. WECKER, HOW DO YOU KNOW THIS NUMBER WAS NOT BASED ON AUTOPSY REPORTS?
A. BECAUSE I KNOW IT'S BASED ON -- ONLY ON THE LEVIN FORMULA, BECAUSE I READ THE ARTICLE I'M HOLDING IN MY HAND (INDICATING). THAT MADE IT CLEAR.
Q. COULD YOU JUST READ THE TITLE OF THE ARTICLE.
A. "CDC MORTALITY MORBIDITY, WEEKLY REPORT, AUGUST 17, 1993."
MR. FURR: OKAY.
MR. BROWN: OBJECTION. HEARSAY.
THE COURT: SUSTAINED.
MR. FURR: THANKS VERY MUCH.
THE COURT: THAT'S HEARSAY. I'M GOING TO STRIKE THE ANSWERS TO THE LAST TWO QUESTIONS. IT'S BASED ON HEARSAY.
MR. FURR: THANK VERY MUCH, DOCTOR.
THE WITNESS: THANKS.
MR. BROWN: NO QUESTIONS.

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THE COURT: OKAY. MAY THE DOCTOR BE EXCUSED?
MR. BROWN: YES, HE CAN.
THE COURT: YES.
MR. FURR: YES, YOUR HONOR.
THE COURT: YOU ARE EXCUSED.

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(WITNESS EXCUSED)
MR. HARDY: YOUR HONOR, I THINK, NEXT, WE'LL READ FROM THE DEPOSITION OF DR. KIN JUNG.
THE COURT: WHY DON'T YOU GIVE THE NAME AND DATE OF THE DEPOSITION. SPELL THE NAME, PLEASE.
MR. HARDY: IT'S THE DEPOSITION OF KIN, K-I-N.
THE COURT: K-I-N?
MR. HARDY: YES. JUNG, J-U-N-G, M.D., FRIDAY DECEMBER 3, 1999.
AND IT'S DEFENDANTS' EXHIBIT 4850.
(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION DEFENDANTS' EXHIBIT # 4850)
MR. HARDY: I UNDERSTAND THE COURT'S PROCEDURE IS JUDITH DOES NOT TAKE THIS DOWN. WE GIVE A COPY OF WHAT IS BEING READ TO TATSUO. AND THAT'S WHAT I'M DOING.
THE COURT: IS THERE A COPY FOR THE COURT THAT'S MARKED FOR IDENTIFICATION?
MR. HARDY: THERE IS A COPY HERE FOR THE COURT.
THE COURT: THANK YOU. AN EXTRA COPY.
SO 4850 IS THE TRANSCRIPT OF WHAT'S BEING READ?
MR. HARDY: YES, YOUR HONOR.

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THE COURT: OKAY. AND WE HAVE THE SAME STIPULATION, MS. CHABER, ABOUT THE READING OF THIS?
MS. CHABER: YES.
THE COURT: SO I THINK --
MR. HARDY: WITH THE COURT'S PERMISSION, DAVID STOMP WILL COME UP AND PLAY THE ROLE OF DR. JUNG.
THE COURT: OKAY.
I THINK WE ARE READY TO GO OFF THE RECORD FOR THE PURPOSE OF THE READING.
MR. HARDY: YES, YOUR HONOR.
(DEPOSITION READ)
THE COURT: BACK ON THE RECORD. WE COMPLETED THE READING OF DR. JUNG'S DEPOSITION.
WHAT'S NEXT?
MR. HARDY: I BELIEVE WE ARE GOING TO SHOW A TAPE OF THE REBECCA ENLOW DEPOSITION.
THE COURT: CAN YOU GIVE US THE SPELLING OF THE NAME AND THE DATE OF THE DEPOSITION, PLEASE.
MR. ESCHER: YES. IT'S REBECCA, R-E-B-E-C-C-A, L. ENLOW, E-N-L-O-W.
IT WAS TAKEN OCTOBER 19TH, 1999.
THE COURT: OKAY. AND THIS IS A VIDEO OF THE DEPOSITION YOU ARE GOING TO PLAY?
MR. ESCHER: THAT'S RIGHT, YOUR HONOR.
THIS IS ONE THAT HAS THE TWO ERRATA THAT WE'LL HAVE TO READ WHEN WE GET TO THOSE POINTS.
THE COURT: WE'LL KEEP JUDITH AVAILABLE.
MR. ESCHER: DID YOU WANT A COPY OF IT TO READ

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ALONG?
THE COURT: ARE WE GOING TO MARK FOR IDENTIFICATION BOTH THE TRANSCRIPT AND THE VIDEOTAPE?
MR. ESCHER: YES. I THINK SO, YOUR HONOR.

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THE COURT: OKAY. WHY DON'T WE DO THAT.
MR. ESCHER: WE'VE MARKED AS 4851 THE DEPOSITION
TRANSCRIPT OF REBECCA ENLOW.
(DOCUMENT MORE PARTICULARLY
LISTED IN THE INDEX MARKED
FOR IDENTIFICATION DEFENDANTS'
EXHIBIT # 4851)
THE COURT: AND THAT SHOWS THE PORTIONS THAT ARE
GOING TO BE PLAYED?
MR. ESCHER: YES, YOUR HONOR.
AND THE VIDEOTAPE ITSELF HAS BEEN MARKED AS
4851-A.
(ITEM MORE PARTICULARLY
LISTED IN THE INDEX MARKED
FOR IDENTIFICATION DEFENDANTS'
EXHIBIT # 4851-A)
THE COURT: PURSUANT TO THE STIPULATION, WE ARE
ABOUT TO GO OFF THE RECORD FOR THE PLAYING OF THE VIDEO,
WITH THE UNDERSTANDING THAT THE TRANSCRIPT, WHICH IS 4851
FOR IDENTIFICATION, WILL TELL US WHAT WAS BEING PLAYED ON
THE VIDEO.
WE CAN GO OFF THE RECORD.
(VIDEOTAPE SHOWN)
THE COURT: WE ARE ON THE RECORD. WE
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INTERRUPTED THE VIDEO.
MR. ESCHER WANTS TO SAY SOMETHING.
MR. ESCHER: YES, YOUR HONOR. I TRIED TO STOP
IT IN TIME, RIGHT AFTER THE QUESTION: "OR COULD BE TERMED
ADDICTIVE, CORRECT?"
THE VIDEOTAPE WENT INTO THE ANSWER TO THE
FOLLOWING QUESTION, AND IT SHOULDN'T HAVE, AND IT WAS
DELETED, BECAUSE THERE'S AN ERRATA TO THE ANSWER THAT'S IN
THE DEPOSITION TRANSCRIPT ITSELF WITH RESPECT TO THE
QUESTION OF: "COULD CREATE A STRONG DEPENDENCE OR COULD BE
TERMED ADDICTIVE, CORRECT?"
THE ERRATA, AND THE ANSWER IS: "YES I THINK DID
UNDERSTAND THAT."
THE COURT: OKAY. WE CAN GO OFF THE RECORD AND
CONTINUE PLAYING THE VIDEO.
(VIDEOTAPE SHOWN)
MR. ESCHER: I HAVE TO READ FROM THE ERRATA
AGAIN, YOUR HONOR.
THE COURT: OKAY.
MR. ESCHER: THE ANSWER IS: "17 YEARS AGO, WE
DISCUSSED QUITTING SMOKING BECAUSE IT WAS/IS
SUPPOSED TO BE DANGEROUS TO YOUR HEALTH AND MY
UNBORN BABY. I REMEMBERED THAT AFTER I REREAD
THE QUESTION IN THE DEPOSITION BOOKLET AND MR.
BARRON'S LAST REMARKS ON PAGE 116, LINE NO. 4."
THAT'S IT.
THE COURT: DOES IT SAY PAGE 160?
MR. ESCHER: PAGE 116, LINE NO. 4.
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THAT'S IT FOR THE ERRATA, YOUR HONOR.
MS. CHABER: BUT YOU'RE PLAYING THE ANSWER?
MR. ESCHER: I DON'T BELIEVE SO. I NEED TO

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DOUBLE-CHECK.
IT WASN'T INDICATED TO BE PLAYED ON THE
TRANSCRIPT.
MS. CHABER: YES. IT WAS SUPPOSED TO BE PLAYED
AND THEN THE ERRATA WAS SUPPOSED TO BE DISCUSSED.
THE COURT: THE PROPER WAY TO DO THIS IS TO READ
THE ORIGINAL ANSWER AND THEN TO READ THE CHANGE.
MR. ESCHER: I'M HAPPY TO DO THAT NOW, YOUR HONOR.
THE COURT: WE'LL READ THE QUESTION ON THE RECORD.
YOU GO AHEAD AND DO IT.
MS. CHABER: I WILL DO THE READING ON THIS PART
BECAUSE IT'S MY QUESTION.
THE COURT: LET'S JUST BE CLEAR ABOUT WHAT THE ORIGINAL ANSWER WAS AND --
MS. CHABER: THAT'S WHAT --
THE COURT: LET ME FINISH, COUNSEL, PLEASE.
LET'S JUST BE CLEAR ON THE RECORD WHAT THE ORIGINAL ANSWER WAS AND WHAT THE CHANGE WAS.
SO MS. CHABER, YOU ARE GOING TO READ THE ORIGINAL ANSWER?
MS. CHABER: YES.
THE COURT: OKAY.
MS. CHABER: "QUESTION: HAS LESLIE EVER TALKED

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TO YOU ABOUT WHETHER OR NOT SHE BELIEVES SHE'S ADDICTED TO CIGARETTE SMOKING?
"ANSWER: YES.
"QUESTION: WHAT WAS THE CONVERSATION THAT YOU'VE HAD ABOUT THAT?
"ANSWER: WE DISCUSSED IT BECAUSE WE HAD BOTH DISCUSSED QUITTING. AND WE ATTEMPTED IT, OR I HAD. PRETENDED TO. IT'S DIFFICULT.
"WHAT SHE SAID WAS SHE THOUGHT IT WAS -- SHE HAD HEARD THAT IT WAS HARDER TO QUIT SMOKING THAN TO QUIT USING DRUGS THAT YOU-- LIKE HEROIN, THAT YOU GET ADDICTED TO. SHE HAD READ IT IN A MAGAZINE, I THINK."
AND THEN THERE IS THE ERRATA.
THE COURT: NOW, DO YOU WANT TO READ THE CORRECT ONE?
MR. ESCHER: YES, I WILL READ THE CORRECTED ANSWER, YOUR HONOR, WHICH IS AS FOLLOWS:
"17 YEARS AGO, WE DISCUSSED QUITTING SMOKING BECAUSE IT WAS/IS SUPPOSED TO DANGEROUS TO YOUR HEALTH AND MY UNBORN BABY. I REMEMBERED THAT AFTER I REREAD THE QUESTION IN THE DEPOSITION BOOKLET AND MR. BARRON'S LAST REMARKS ON PAGE 116, LINE NO. 4."
THE COURT: OKAY. SHALL WE RETURN TO THE VIDEO?
MR. ESCHER: YES.

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THE COURT: OKAY. OFF THE RECORD.

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(VIDEOTAPE SHOWN)

THE COURT: BACK ON THE RECORD.

THAT COMPLETES THE READING OF THE DEPOSITION -- OR EXCUSE ME -- THE PLAYING OF THE VIDEOTAPE DEPOSITION OF MS. ENLOW.

MR. HARDY: I THINK THAT'S ALL WE HAVE FOR TODAY.

THE COURT: OKAY. IF YOU WANT TO TALK WITH EACH OTHER, YOU CAN COME UP WITH THE ANSWER AS TO WHAT TIME YOU WANT TO START TOMORROW AND TO HAVE THE JURY. WHATEVER TIME YOU PICK, WE'LL START.

DO YOU WANT TO TALK TO EACH OTHER ABOUT IT?

(ATTORNEYS CONFER)

THE COURT: IN THE MEANWHILE, JURORS, OVER THE EVENING, PLEASE CONTINUE TO FOLLOW THE ADMONITION. YOU KNOW IT'S ABSOLUTELY CRITICAL THAT YOU DO SO.

MR. HARDY: 9:00 O'CLOCK.

OKAY, JURORS. WE ARE GOING TO START TOMORROW AT 9:00 O'CLOCK.

HAVE A GOOD EVENING. WE'LL SEE YOU TOMORROW AT 9:00 O'CLOCK.

(THE PROCEEDINGS ADJOURNED AT 4:50 P.M.)

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